

TO THE CONGRESS OF THE UNITED STATES:

In accordance with the requirements of Public Law 94-584 (the "Act"), I hereby transmit to the Congress a proposed constitution for the United States Virgin Islands (USVI). The constitution, drafted by the Fifth Constitutional Convention of the United States Virgin Islands, was submitted to me on December 31, 2009, by Governor John P. deJongh, United States Virgin Islands. In submitting the proposed constitution, Governor deJongh expressed his concerns about several provisions of the proposed constitution, but he also expressed his hope that the people of the United States Virgin Islands continue to "move ahead towards [their] goal of increased local governmental autonomy."

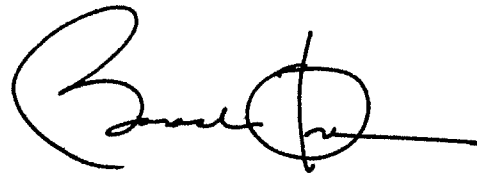
The Act requires that I submit this proposed constitution to the Congress, along with my comments. The Congress then has 60 days to amend, modify, or approve the proposed constitution. If approved, or approved with modification, the constitution will be submitted for a referendum in the Virgin Islands for acceptance or rejection by the people.

In carrying out my responsibilities pursuant to the Act, I asked the Department of Justice, in consultation with the Department of the Interior, to provide its views of the proposed constitution. The Department of Justice concluded that several features of the proposed constitution warrant analysis and comment, including: (1) the absence of an express recognition of United States sovereignty and the supremacy of Federal law; (2) provisions for a special election on the USVI's territorial status; (3) provisions conferring legal advantages on certain groups defined by place and timing of birth, timing of residency, or ancestry; (4) residence requirements for certain offices; (5) provisions guaranteeing legislative representation

of certain geographic areas; (6) provisions addressing territorial waters and marine resources; (7) imprecise language in certain provisions of the proposed constitution's bill of rights; (8) the possible need to repeal certain Federal laws if the proposed USVI constitution is adopted; and (9) the effect of congressional action or inaction on the proposed constitution.

To assist the Congress in its deliberations about this important matter, I attach the analysis of the Department of Justice, with which the Department of the Interior concurs. I believe that the analysis provided by the Department of Justice warrants careful attention.

I commend the electorate of the Virgin Islands and its governmental representatives in their continuing commitment to increasing self-government and the rule of law.

A handwritten signature in black ink, appearing to be "Barack Obama", written in a cursive style. The signature is positioned to the right of the main text block.

THE WHITE HOUSE,

February 26, 2010.



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

February 23, 2010

MEMORANDUM FOR THE OFFICE OF MANAGEMENT AND BUDGET

Re: Proposed Constitution for the U.S. Virgin Islands

This responds to the Office of Management and Budget's request for the views of the Department of Justice on the proposed constitution recently adopted by a constitutional convention in the U.S. Virgin Islands ("USVI") and submitted to the President by the Governor of the USVI.¹ Below we provide our analysis of several features of the proposed constitution that we believe warrant comment: (1) the absence of an express recognition of United States sovereignty and the supremacy of federal law; (2) provisions for a special election on the USVI's territorial status; (3) provisions conferring legal advantages on certain groups defined by place and timing of birth, timing of residency, or ancestry; (4) residence requirements for certain offices; (5) provisions guaranteeing legislative representation of certain geographic areas; (6) provisions addressing territorial waters and marine resources; (7) imprecise language in certain provisions of the proposed constitution's bill of rights; (8) the possible need to repeal certain federal laws if the proposed USVI constitution is adopted; and (9) the effect of congressional action or inaction on the proposed constitution.

Because we find it difficult to discern a legitimate governmental purpose that would be rationally advanced by the provisions conferring legal advantages on certain groups defined by place and timing of birth, timing of residency, or ancestry, we recommend that those provisions be removed from the proposed constitution. *See infra* part II.C. We conclude that the ten- and fifteen-year residence requirements for USVI Governors, Lieutenant Governors, and judges raise constitutional concerns, and we recommend that consideration be given to shortening the duration of these requirements. *See infra* part II.D. As explained below, the provision concerning territorial waters and marine resources appears to be inconsistent with governing federal law. We recommend that it be revised to remove any inconsistency and to make clear its recognition of Congress's plenary control over these matters. *See infra* part II.F.

I. Background

The USVI is an unincorporated territory acquired by the United States from Denmark in 1917. *See* 48 U.S.C. § 1541(a) (2006); *Convention Between the United States and Denmark for Cession of the Danish West Indies*, 39 Stat. 1706 (1916); *see generally* Isaac Dookhan, *A History of the Virgin Islands of the United States* 258-62 (1994). The USVI's government is established under the Organic Act of 1936, as amended, 48 U.S.C. §§ 1405-1406m (2006), and the Revised Organic Act of 1954, as amended, 48 U.S.C. §§ 1541-1645 (2006). *See also* 48 U.S.C. §§ 1392-1397 (2006). A 1976 Act of Congress, however, permits the USVI to propose a constitution for

¹ *See* Letter from Governor John P. de Jongh, Jr., to Hon. Barack H. Obama, President of the United States (Dec. 31, 2009).

the local government of the Islands. *See* Act of Oct. 21, 1976, Pub. L. No. 94-584, 90 Stat. 2899, as amended by Pub. L. No. 96-597, tit. V, § 501, 94 Stat. 3477, 3479 (1980), codified as a note following table of contents of 48 U.S.C. ch. 12 (2006) (“Enabling Act”).

Under the 1976 Enabling Act, the USVI’s legislature may “call [a] constitutional convention[] to draft, within the existing territorial-Federal relationship, [a] constitution[] for the local self-government of the people of the Virgin Islands.” *Id.* § 2(a). The proposed constitution must: (1) “recognize, and be consistent with, the sovereignty of the United States over the Virgin Islands . . . and the supremacy of the provisions of the Constitution, treaties, and laws of the United States applicable to the Virgin Islands,” including provisions of the Organic Act and Revised Organic Act that “do not relate to local self-government”; (2) “provide for a republican form of government, consisting of three branches: executive, legislative, and judicial”; (3) “contain a bill of rights”; (4) “deal with the subject matter of” provisions of the Organic Act and Revised Organic Act that “relate to local self-government”; and (5) provide for a system of local courts consistent with the Revised Organic Act. *Id.* § 2(b).

The Enabling Act requires the Governor of the Virgin Islands to submit a proposed constitution to the President. *See id.* § 4 (“Such constitutions shall be submitted to the President of the United States by the Governor[] of the Virgin Islands”). The President “shall transmit such constitution together with his comments to the Congress” within sixty days of receipt. *Id.* § 5. Congress may approve, amend, or modify the constitution by joint resolution, but the constitution “shall be deemed to have been approved” if Congress takes no action within “sixty legislative days (not interrupted by an adjournment sine die of the Congress) after its submission by the President.” *Id.* Any constitution approved by Congress takes effect only if then approved by referendum in the USVI. *See id.*

A constitutional convention in the USVI proposed a constitution under the Enabling Act in 1978. The President transmitted this constitution to Congress with comments recommending certain changes. *See Message from the President of the United States Transmitting the Proposed Constitution for the Virgin Islands, Pursuant to Section 5 of Public Law 94-584*, H.R. Doc. No. 95-385 (1978). The constitution was then deemed approved under the Enabling Act because Congress took no action, but the USVI voters rejected it in a referendum. *See Department of Justice Views on the Constitution Adopted by the Constitutional Convention of the Virgin Islands*, 4B Op. O.L.C. 759, 760 n.1 (1980) (“DOJ Views”); S. Rep. No. 97-66, at 2 (1981). Another constitution was proposed in 1980. The President transmitted this constitution, too, providing comments and recommending changes based in part on a memorandum from the Department of Justice. *See Message from the President of the United States Transmitting a Proposed Constitution for the Virgin Islands, Pursuant to Section 5 of Public Law 94-584*, H.R. Doc. No. 96-375 (1980) (“1980 Presidential Message” or “1980 Constitution”); DOJ Views, 4B Op. O.L.C. at 759. The USVI constitutional convention reconvened and proposed amendments to the constitution in response to Administration concerns, and Congress approved a modified version of the constitution by joint resolution. *See* Pub. L. No. 97-21, 95 Stat. 105 (1981); S. Rep. No. 97-66, at 2; H.R. Rep. No. 97-25, at 2 (1981); *Fourth Constitution of the Virgin Islands: Hearing Before the Senate Committee on Energy and Natural Resources*, 97th Cong., 173, 181 (1981) (“Hr’g on Fourth USVI Constitution”); Statement on Signing a Bill To Approve a Constitution for the United States Virgin Islands, 1981 Pub. Papers 617 (July 10, 1981). The

USVI electorate, however, again rejected the constitution. *See DOJ Views*, 4B Op. O.L.C. at 759.

A constitutional convention in the USVI adopted the present proposed constitution at the end of May 2009, and the Governor of the USVI submitted it to the President on December 31, 2009. *See* Letter from Governor John P. de Jongh, Jr., to Hon. Barack H. Obama, President of the United States (Dec. 31, 2009). The Governor also forwarded a legal opinion on the draft constitution prepared by the Attorney General of the USVI. *See* Letter to the Hon. John P. de Jongh, Jr., Governor of the Virgin Islands, from Vincent F. Frazer, Esq., Attorney General (June 8, 2009) (“USVI AG Op.”). Both the Governor and the Attorney General expressed concerns that the proposed constitution is inconsistent with the Enabling Act and the U.S. Constitution.

II. Discussion

A. Recognition of U.S. Sovereignty and the Supremacy of Federal Law

The Enabling Act requires any proposed constitution for the USVI to “recognize” and “be consistent with” United States sovereignty and the supremacy of the applicable provisions of the Constitution, treaties, and laws of the United States. Enabling Act § 2(b)(1). The current proposed constitution, like the one initially proposed in 1980, does not include an express statement directly satisfying this requirement. Indeed, one provision of the current constitution states, without any reference to the U.S. Constitution or federal law, that “[t]his Constitution shall be the supreme law of the Virgin Islands,” *see* Constitution of the Virgin Islands of the United States, Fifth Constitutional Convention, art. II, § 5 (June 1, 2009) (“Proposed Const.”), and in several places the proposed constitution refers to the USVI’s “sovereignty” or “right of self-determination.” *E.g.*, *id.* pmb. para. 6, art. XII, § 2. Particularly in light of these provisions, we think it would be preferable if Congress revised—or urged a reconvened constitutional convention to revise—the proposed constitution to include a more express recognition of U.S. sovereignty and especially of the supremacy of federal law, as Congress did in considering the 1980 proposed constitution. Even in its current form, though, we conclude, as the Department did in reviewing the 1980 proposed constitution, that a number of provisions in the present proposed constitution considered together bring it into substantial compliance with the Enabling Act’s requirement that the proposed constitution recognize U.S. sovereignty and the supremacy of federal law. *See DOJ Views*, 4B Op. O.L.C. at 760-61.

Because the Department’s analysis of the 1980 proposed constitution informs our analysis of the current proposed constitution, we begin by describing the Department’s 1980 analysis and the development of that earlier proposed constitution in some detail. The 1980 proposed constitution, like the constitution proposed now, included no express statement of federal sovereignty and supremacy. And that earlier proposed constitution described “[t]his Constitution and laws of the Virgin Islands enacted under it” as “the supreme law of the Virgin Islands.” *See* 1980 Constitution at 7. The Justice Department nonetheless concluded that the 1980 proposed constitution was in “substantial compliance” with subsection 2(b)(1) of the Enabling Act because other provisions effectively acknowledged United States sovereignty and the supremacy of federal law. *See DOJ Views*, 4B Op. O.L.C. at 760-61. As the Department explained, the 1980 proposed constitution’s preamble included a statement “declar[ing] that the Virgin Islands assume ‘the responsibilities of self-government in political union with the United

States.” See *id.* at 760 (quoting 1980 proposed constitution). In prior testimony regarding a proposed constitution for the territory of Guam, a Justice Department witness had observed that “[n]early 200 years of political history have established that political union with the United States necessarily carries with it the recognition of the sovereignty of the United States and the supremacy of its laws,” and that a statement in the preamble of the Guam constitution referring to “political union” with the United States was therefore “sufficient to overcome any contention that the explicit or tacit approval of the constitution by Congress would have the effect of relinquishing the sovereignty of the United States over Guam and the supremacy of Federal laws.” *Constitution of Guam: Hearing Before the Senate Committee on Energy and Natural Resources*, 95th Cong. 64 (1978) (statement of Herman Marcuse, Attorney-Adviser, Office of Legal Counsel, Dep’t of Justice). By the same token, the Department concluded that the reference to “political union” in the 1980 USVI proposed constitution sufficiently recognized federal sovereignty and supremacy to satisfy the Enabling Act. See *DOJ Views*, 4B Op. O.L.C. at 761. The Department further observed that a draft official analysis of the 1980 proposed constitution interpreted its preamble as recognizing U.S. sovereignty and that the proposed 1980 USVI constitution elsewhere limited the legislative power of the USVI government to “subjects . . . consistent with . . . the Constitution and laws of the United States applicable to the Virgin Islands.” See *id.* at 760; see also Hr’g on Fourth USVI Constitution at 58 (reproducing draft official analysis); 1980 Constitution at 7.

In accordance with the Justice Department’s conclusions, the President stated in his message transmitting the 1980 proposed constitution to Congress that “[t]he document implicitly recognizes the sovereignty of the United States and the supremacy of United States law over locally-enacted legislation, and is, therefore, in substantial compliance with the pertinent provision of the Enabling Act that established the procedure for the drafting of a constitution for the Virgin Islands.” 1980 Presidential Message at iii.

Discussions in Congress led to a suggestion that an additional reference to U.S. sovereignty and federal supremacy be added. See Hr’g on Fourth USVI Constitution at 173, 194. The USVI constitutional convention then proposed and Congress adopted an additional clause qualifying the draft constitution’s statement that the USVI constitution and laws enacted under it constituted the “supreme law of the Virgin Islands” so as to assert such supremacy only “[t]o the extent not inconsistent with the Constitution and laws of the United States.” See S. Rep. No. 97-66, at 4; H.R. Rep. No. 97-25, at 2, 11; Pub. L. No. 97-21, 95 Stat. at 109.

The current proposed USVI constitution appears no less compliant with subsection 2(b)(1) of the Enabling Act than the constitution originally proposed in 1980, if not also the revised version of that constitution ultimately approved by Congress. Much as the preamble of the 1980 constitution described the USVI as “assuming the responsibilities of self-government in political union with the United States,” 1980 Constitution at 1, the preamble of the current proposed constitution declares that the USVI is “assuming the responsibilities of self-government as an unincorporated territory of the United States.” Proposed Const. pmbl. para. 1 (emphasis added). The term “unincorporated territory of the United States,” like the term “political union,” carries a well-established meaning signifying recognition of the supremacy of the United States government. *Territorial Court of the Virgin Islands v. Richards*, 673 F. Supp. 152, 157 (D.V.I. 1987) (identifying the USVI as an “unincorporated territory” and describing Congress’s authority over the territory as “plenary”), *aff’d*, 847 F.2d 108, 112 (3d Cir. 1988);

Harris v. Boreham, 233 F.2d 110, 113-14 (3d Cir. 1956) (describing Congress’s “sovereignty” over “unincorporated territories, such as the Virgin Islands”); S. Rep. No. 97-66, at 4 (report on the 1980 constitution describing the USVI as “an unincorporated territory of the United States subject to the plenary authority of the Congress”). Indeed, the Constitution itself prescribes that “[t]he Congress shall have Power to dispose of and make all needful Rules and Regulations” with respect to United States territories. U.S. Const. art. IV, § 3, cl. 2. The current proposed constitution’s acknowledgment of the USVI’s status as an “unincorporated territory of the United States” thus implies recognition of the United States’ sovereignty over the USVI.

Furthermore, the current proposed constitution also recognizes congressional authority over the USVI by describing the 1917 treaty between the United States and Denmark as “confirm[ing]” that Congress may “determine[]” the “civil rights and political status of the inhabitants” of the USVI, *see* Proposed Const. pmbl. para. 3; it limits the legislative power of the USVI to “subjects of legislation consistent with . . . the Constitution and laws of the United States,” just as the 1980 proposed constitution did, *see id.* art. V, § 1; 1980 Constitution at 7; and in certain other provisions it acknowledges the applicability of federal law, *see, e.g.*, Proposed Const. art. IV, § 4 (prohibiting any “political or religious test” for public office “other than an oath or affirmation to support the Constitution and laws of the Virgin Islands, and the Constitution and laws of the United States”); *id.* art. VII, § 2 (providing that decisions of the USVI Supreme Court “on questions arising under this Constitution and the laws of the Virgin Islands shall be final, except as Federal law may provide for review of such decisions by courts of the United States”); *id.* art. VII, § 3 (requiring rules in USVI courts to be consistent with the United States Constitution and federal laws). It is true that the current proposed constitution also states that it “shall be the supreme law of the Virgin Islands.” *See id.* art. II, § 5. But while, as noted above, Congress revised the similar supremacy provision in the 1980 proposed constitution to declare that “[t]his Constitution and laws of the Virgin Islands enacted under it shall be the supreme law of the Virgin Islands” only “[t]o the extent not inconsistent with the Constitution and laws of the United States,” Pub. L. No. 97-21, 95 Stat. at 109; *see also* Hr’g on Fourth USVI Constitution at 173, 194; S. Rep. No. 97-66, at 4; H.R. Rep. No. 97-25, at 2, 11, the President and the Department of Justice deemed the 1980 proposed constitution in “substantial compliance” with the Enabling Act even without this change. Moreover, the original supremacy provision in the 1980 proposed constitution was arguably less consistent with United States sovereignty and federal supremacy than the current provision. The supremacy clause of the 1980 proposed constitution appeared in a provision addressing legislative powers and asserted the supremacy not only of the proposed constitution, but also of “laws of the Virgin Islands enacted under it.” *See* 1980 Constitution at 7. In contrast, the supremacy provision of the current proposed constitution appears in a stand-alone section and refers only to the USVI constitution. *See* Proposed Const. art. II, § 5. It may therefore be reasonably understood to indicate only that the USVI constitution is “the supreme law of the Virgin Islands” in the sense of superseding other USVI laws but not federal law. *Cf.* Maine Const. art. X, § 6 (referring to the Maine constitution as “the supreme law of the State”); Iowa Const. art. XII, § 1 (“This constitution shall be the supreme law of the state, and any law inconsistent therewith, shall be void.”).

Accordingly, while we think it would be preferable if Congress revised—or urged a reconvened constitutional convention to revise—the proposed constitution to include a more express recognition of U.S. sovereignty and especially of the supremacy of federal law, as Congress did in considering the 1980 proposed constitution, we believe the proposed constitution

is in substantial compliance with subsection 2(b)(1) of the Enabling Act. *DOJ Views*, 4B Op. O.L.C. at 761.

B. Political Status Elections

In Article XVII, the proposed constitution provides for a “special election,” to be held after a year of “Public Education” programs conducted by a “Political Status Advisory Commission,” on “the status and federal relations options of: (1) statehood, (2) free association, and (3) Independence.” Proposed Const. art. XVII, §§ 1, 2(a). Because Congress in the Enabling Act has authorized conventions to draft a USVI constitution only for “local self-government” “within the existing territorial-Federal relationship,” Enabling Act § 2(a); *see also* S. Rep. No. 94-1033, at 4 (1976) (emphasizing that “the constitution [authorized by the Enabling Act] is not a status document and that the issue of local self-government should not be delayed or confused with discussions relating to alterations in existing federal relations”); *id.* at 8 (letter from the Assistant Secretary of the Interior to the same effect), some may question the appropriateness of the inclusion of this provision in the proposed constitution. We do not believe, however, that this provision violates the Enabling Act.

Given Congress’s constitutional authority over territories, any change in status for the USVI would require action by Congress. *See* U.S. Const. art. IV, § 3, cl. 2; *see also, e.g., Examining Bd. of Engineers, Architects & Surveyors v. Flores de Otero*, 426 U.S. 572, 586 n.16 (1976); *Simms v. Simms*, 175 U.S. 162, 167-68 (1899); *Talbott v. Silver Bow County*, 139 U.S. 438, 445-46 (1891); *First Nat’l Bank v. Yankton County*, 101 U.S. 129, 132-33 (1879); *Bluebeard’s Castle, Inc. v. Gov’t of the Virgin Islands*, 321 F.3d 394, 397 (3d Cir. 2003). The special election therefore would not effect any departure from the “existing territorial-Federal relationship.” Moreover, the USVI local government has established public education commissions on the USVI’s territorial status in the past and in 1993 held a referendum on the subject. We believe such efforts to canvass the electorate on issues of fundamental concern may serve valid purposes of local self-government. *See, e.g.,* 1988 V.I. Sess. Laws 5332; *see generally* H.R. Rep. No. 111-357, at 4 (2009); Stanley K. Laughlin, Jr., *The Law of the United States Territories and Affiliated Jurisdictions* 380 (1995).

C. Classifications Based on Place and Timing of Birth, Timing of Residence, and Ancestry

Several provisions of the proposed constitution give special advantages to “Native Virgin Islanders” and “Ancestral Native Virgin Islanders.” These provisions raise serious concerns under the equal protection guarantee of the U.S. Constitution, which has been made applicable to the USVI by the Revised Organic Act.

In Article III, section 2, the proposed constitution would define “Native Virgin Islander” to mean (1) “a person born in the Virgin Islands after June 28, 1932,” the enactment date of a statute generally extending United States citizenship to USVI natives residing in United States territory as of that date who were not citizens or subjects of any foreign country, *see* Act of June 28, 1932, ch. 283, 47 Stat. 336 (now codified at 8 U.S.C. 1406(a)(4) (2006)); and (2) a “descendant[] of a person born in the Virgin Islands after June 28, 1932.” “Ancestral Native Virgin Islander” would be defined as: (1) “a person born or domiciled in the Virgin Islands prior

to and including June 28, 1932 and not a citizen of a foreign country pursuant to 8 U.S.C. [§] 1406,” the statute governing United States citizenship of USVI residents and natives; (2) “descendants” of such individuals; and (3) “descendants of an Ancestral Native Virgin Islander residing outside of the U.S., its territories and possessions between January 17, 1917 and June 28, 1932, not subject to the jurisdiction of the U.S. and who are not a citizens [sic] or a subjects [sic] of any foreign country.” Proposed Const. art. III, § 1.²

1. Property Tax Exemption for Ancestral Native Virgin Islanders

Under the proposed constitution, the USVI legislature would be authorized to impose real property taxes, but “[n]o Real Property tax shall be assessed on the primary residence or undeveloped land of an Ancestral Native Virgin Islander.” Proposed Const. art. XI, § 5(g). The property tax exemption for Ancestral Native Virgin Islanders raises serious equal protection concerns. The Equal Protection Clause of the Fourteenth Amendment, which has been extended to the USVI by statute, *see* 48 U.S.C. § 1561 (2006),³ generally requires only that legislative classifications be rationally related to a legitimate governmental purpose. *See, e.g., Heller v. Doe*, 509 U.S. 312, 319-20 (1993). But the proposed constitution does not identify a legitimate governmental purpose that the real property tax exemption for Ancestral Native Virgin Islanders would further, and it is difficult for us to discern a legitimate governmental purpose that the exemption could be said to further.

The definition of Ancestral Native Virgin Islander appears to combine two sub-classes: (i) individuals born or domiciled in the USVI before a certain date and (ii) descendants of such persons. The first sub-class may include many long-time residents of the USVI, but to the extent the real property tax exemption is designed to benefit such long-time residents it raises serious equal protection concerns. The Supreme Court has held that statutes limiting benefits, including property tax exemptions, to citizens residing in a jurisdiction before a specified date are not rationally related to any legitimate governmental purpose. For example, in *Hooper v. Bernalillo County Assessor*, 472 U.S. 612 (1985), the Court held that a New Mexico property tax exemption applicable only to Vietnam War veterans who resided in the state before a certain date violated equal protection by “creat[ing] two tiers of resident Vietnam veterans, identifying resident veterans who settled in the State after May 8, 1976, as in a sense ‘second-class citizens.’” *Id.* at 623. Explaining that “singling out previous residents for the tax exemption[]

² The third prong of this definition appears circular insofar as it defines “Ancestral Native Virgin Islander” in terms of descendants of “Ancestral Native Virgin Islanders” (a category of people already encompassed by the definition’s second prong), and it is also grammatically ambiguous with respect to whether the qualifying terms modify the “descendants” or the “Ancestral Native Virgin Islander” from whom they are descended.

We think it clear that these classifications could not be considered tribal within the meaning of the Indian Commerce Clause, U.S. Const. art. I, § 8, cl. 3, that is, as falling within the established body of law defining the special relationship between aboriginal peoples of the United States and the Federal Government. In any event, that Clause empowers Congress, not the government of the Virgin Islands.

³ *See also, e.g., Government of the Virgin Islands v. Davis*, 561 F.3d 159, 163-64 n.3 (3d Cir. 2009) (recognizing applicability of the Fifth and Fourteenth Amendment Due Process Clauses to the USVI under the Revised Organic Act); *Hendrickson v. Reg O Co.*, 657 F.2d 9, 13 n.2 (3d Cir. 1981) (same); *Moolenaar v. Todman*, 433 F.2d 359, 359 (3d Cir. 1970) (per curiam) (requiring adherence to “the constitutional requirements of equal protection of the law” in the USVI).

[and] reward[ing] only those citizens for their ‘past contributions’ toward our Nation’s military effort in Vietnam” was “not a legitimate state purpose,” the Court held that the tax exemption violated the Equal Protection Clause by “creat[ing] fixed, permanent distinctions . . . between . . . classes of concededly bona fide residents.” *Id.* at 622-23 (quoting *Zobel v. Williams*, 457 U.S. 55, 59 (1982)); *see also, e.g., Att’y Gen. of N.Y. v. Soto-Lopez*, 476 U.S. 898, 909, 911 (1986) (plurality opinion) (applying heightened scrutiny to invalidate civil service employment preference limited to veterans who lived in the state when they entered the armed forces); *id.* at 913 (Burger, C.J., concurring in judgment) (same under rational basis review); *Bunyan v. Camacho*, 770 F.2d 773, 776 (9th Cir. 1985) (invalidating law enacted by Guam legislature awarding certain retirement credits for higher education degrees to Guam civil servants only if they resided in Guam before pursuing the degree).

Moreover, even as to this sub-class, the real property tax exemption proposed here appears to be even less constitutionally justifiable than benefits for long-time residents. In *Nordlinger v. Hahn*, 505 U.S. 1 (1992), the Supreme Court upheld a California real property valuation system that disfavored newer purchasers (though not necessarily newer or longer-term residents), and the Court recognized as legitimate two governmental interests for such a system: “local neighborhood preservation, continuity, and stability,” *id.* at 12, and honoring the reliance interests of long-time property owners, *id.* at 12-13. To the extent that those interests might be offered in defense of tax benefits for long-time residents or property owners, they cannot justify the real property tax exemption for Ancestral Native Virgin Islanders. Neither of those interests appears to be rationally furthered by the first sub-class included in the proposed property tax exemption for Ancestral Native Virgin Islanders because membership in that sub-class is defined neither by length of residence nor even by length of property ownership in the USVI, but simply by having been born or having lived in the USVI many years ago. Thus, for example, an individual born in the USVI on June 28, 1932, who left the Islands the following year and who moved back to the Islands and bought a home there 50 years later (or who simply bought an undeveloped piece of land there 50 years later) would be entitled to immunity from real property taxes even though an individual who had spent his or her whole life in the USVI and had owned the same home there for the past 50 years, but who had been born there of parents who had arrived in the USVI as immigrants on June 29, 1932, would not be so shielded. How a system permitting this kind of discrimination could be said to further neighborhood stability or reliance interests of long-time property owners is unclear.

The second sub-class benefitted by the real property exemption for Ancestral Native Virgin Islanders also seems difficult to justify as furthering a legitimate governmental interest, for the second sub-class is defined simply by parentage or ancestry. We need not delve into whether this use of “ancestry” in classifying citizens would be deemed “suspect” and thus subject to heightened scrutiny under the Fourteenth Amendment. *See, e.g., Mass. Bd. of Retirement v. Murgia*, 427 U.S. 307, 312 & n.4 (1976) (per curiam) (identifying alienage, race, and ancestry as classifications subject to strict scrutiny). Again, it is unclear to us what legitimate governmental purpose would support favoring so starkly the descendants of individuals born or resident long ago in the USVI regardless of the descendants’ own connections (or lack thereof) to the Islands.

Because we find it difficult to discern a legitimate governmental purpose that would be rationally advanced by providing property tax exemptions only for Ancestral Native Virgin

Islanders, we would recommend revising the proposed constitution to eliminate Article XI, section 5(g).

2. *Provisions on Voting and Office-Holding Favoring Native Virgin Islanders and Ancestral Native Virgin Islanders*

Provisions in the proposed constitution that limit certain offices and the right to vote in certain elections to Native Virgin Islanders and Ancestral Native Virgin Islanders or that guarantee members of those groups the right to participate in certain elections present similar issues. Under the proposed constitution, the positions of Governor and Lieutenant Governor would be open only to members these groups, *see* Proposed Const. art. VI, § 3(d), as would service on the Political Status Advisory Commission, an eleven-member body composed of four appointed members and seven elected members that would promote awareness of the USVI's political status options and advise the Governor and legislature on "methods to achieve a full measure of self-government." *Id.* art. XVII, §§ 1(b), 3. The special election on "status and federal relations options" provided for under the proposed constitution would be "reserved for vote by Ancestral Native and Native Virgin Islanders only, whether residing within or outside the territory." *Id.* art. XVII, § 2. And the proposed constitution would guarantee that "Ancestral and Native Virgin Islanders, including those who reside outside of the Virgin Islands or in the military, shall have the opportunity to vote on" amendments to the USVI constitution. *Id.* art. XVIII, § 7.⁴

The provisions concerning eligibility to vote in certain elections raise equal protection concerns. To the extent one might attempt to justify the limitation on the electorate for the special election on status options as akin to a durational residence requirement, we believe it is too restrictive to be so justified. Although the Supreme Court has upheld a very brief residential limitation on eligibility to vote in one instance based on a state's legitimate interest in "prepar[ing] adequate voter records and protect[ing] its electoral processes from possible frauds," *Marston v. Lewis*, 410 U.S. 679, 680 (1973) (per curiam) (upholding 50-day durational residence requirement), it has held that even a requirement of one year's residence for voting, as opposed to office-holding, violates constitutional equal protection guarantees. *See Dunn v. Blumstein*, 405 U.S. 330, 360 (1972) (invalidating state's requirement that voters have resided in the state for one year and the county for three months). Moreover, the classifications here are not based on length of residence, and their effects appear potentially arbitrary. As discussed above, the categories of Ancestral Native Virgin Islanders and Native Virgin Islanders are based simply on place and timing of birth, the fact of having resided in the USVI before a certain date regardless of for how brief a time, or ancestry, regardless of the individual's own connection to the USVI. Thus, they could prohibit, for example, a foreign-born but life-long resident of the USVI from voting on political status, but would permit any qualifying ancestral descendant, including those who have never lived in the USVI, to do so. *Cf. Soto-Lopez*, 476 U.S. at 915

⁴ The right to vote on such amendments does not appear to be limited to these groups, as the same provision requires that amendments be submitted "to the electors of the Virgin Islands." Proposed Const. art. XVIII, § 7. Although the term "electors of the Virgin Islands" is undefined, the proposed constitution elsewhere provides that "[e]very citizen of the United States and the Virgin Islands eighteen (18) years of age or older and registered to vote in the Virgin Islands shall have the right to vote." *Id.* art. IV, § 1. The separate provisions establishing special voting rights and opportunities for Ancestral Native Virgin Islanders and Native Virgin Islanders suggest that the term "electors of the Virgin Islands" refers to the broader group of eligible voters.

(Burger, C.J., concurring in judgment) (discussing “irrationality” of law that “would grant a civil service hiring preference to a serviceman entering the military while a resident of [the state] even if he was a resident only for a day,” but that would deny the preference to a veteran “who was a resident of [the state] for over 10 years before applying for a civil service position”); *Dunn*, 405 U.S. at 360 (concluding that the state interest in “knowledgeable” voters did not justify a durational residence requirement for voting because “there is simply too attenuated a relationship between the state interest in an informed electorate and the fixed requirement that voters must have been residents in the State for a year and the county for three months”); *Kramer v. Union Free School Dist. No. 15*, 395 U.S. 621, 632 (1969) (rejecting, under strict scrutiny, restrictions on franchise for school board elections because “[t]he classifications in [the statute] permit inclusion of many persons who have, at best, a remote and indirect interest in school affairs and, on the other hand, exclude others who have a distinct and direct interest in the school meeting decisions”).

The proposed constitution’s guarantee that Native Virgin Islanders and Ancestral Native Virgin Islanders “resid[ing] outside of the Virgin Islands” may vote on amendments to the USVI constitution also raises equal protection concerns. Proposed Const. art. XVIII, § 7. To uphold inclusion of non-resident voters in local government elections against equal protection challenges, courts have required a showing that the non-resident voters have a “substantial interest” in the elections in question. *See, e.g., May v. Town of Mountain Village*, 132 F.3d 576, 583 (10th Cir. 1997) (upholding inclusion of nonresident property owners in town electorate because such voters “have a substantial interest in township elections”); *Board of County Commissioners of Shelby County, Tenn. v. Burson*, 121 F.3d 244, 248-51 (6th Cir. 1997) (deeming participation of city voters in county school board elections irrational and thus impermissible under Fourteenth Amendment where city voters had their own independent school board and lacked a substantial interest in county school board elections); *Hogencamp v. Lee County Bd. of Educ.*, 722 F.2d 720, 722 (11th Cir. 1984) (deeming city taxpayers’ contribution of 2.74% of county school board’s budget “insufficient by itself to create a substantial interest in the city residents” justifying their participation in county school board elections). Because many non-resident Ancestral Native Virgin Islanders and Native Virgin Islanders may have no connection to the Islands apart from ancestry, it is unclear whether their inclusion in the electorate for USVI constitutional amendments would satisfy this standard.

Finally, although the residential duration requirements discussed below for Governor and Lieutenant Governor and members of the Political Status Advisory Commission would prevent non-resident individuals who qualify as Native Virgin Islanders or Ancestral Native Virgin Islanders from serving in those offices, it is unclear what legitimate governmental purpose would be advanced by narrowing the subset of longtime residents who could hold those offices to Native Virgin Islanders and Ancestral Native Virgin Islanders.

In the absence of any identified legitimate governmental interest to support such provisions concerning voting and office-holding based on place of birth, residence many decades ago, or ancestry, we would again recommend that these provisions be removed from the proposed constitution.⁵

⁵ Because we conclude that the restrictions on voting present clear equal protection concerns under the Fourteenth Amendment, we need not consider whether they may also violate the Fifteenth Amendment’s prohibition

D. Residence Requirements for Office-Holding

In addition to the birth and ancestry qualifications discussed above, the proposed constitution imposes substantial residence requirements on a number of USVI offices. In particular, the Governor and Lieutenant Governor would be required to have been “domiciliar[ies]” of the USVI for at least fifteen years, ten of which “must immediately precede the date of filing for office,” Proposed Const. art. VI, § 3(a); judges and justices of the USVI Supreme Court and lower court to be established under the proposed constitution would be required to have been “domiciled” in the USVI for at least ten years “immediately preceding” the judge or justice’s appointment, *id.* art. VII, § 5(b); the Attorney General and Inspector General would need to have resided in the USVI for at least five years, *id.* art. VI, §§ 10(a)(1), 11(a)(2);⁶ and the members of the Political Status Advisory Commission would be required to have been “domiciliaries” of the USVI for “a minimum of five years,” *id.* art. XVII, § 1(b). In addition, the proposed constitution would require that USVI Senators be “domiciled” in their legislative district “for at least one year immediately preceding the first date of filing for office.” *Id.* art. V, § 3(c).

These requirements, particularly those requiring more than five years of residence, raise potential equal protection concerns. As explained in the Department of Justice’s comments on the proposed 1980 constitution, “[t]he Supreme Court has held that candidates for public office ‘do have a federal constitutional right to be considered for public service without the burden of invidiously discriminatory disqualifications.’” *See DOJ Views*, 4B Op. O.L.C. at 766 (quoting *Turner v. Fouche*, 396 U.S. 346, 362 (1970)). Though noting that the Supreme Court has summarily affirmed three decisions upholding five- to seven-year residence requirements for state senators and governors, *see id.* at 767 (citing *Chimento v. Stark*, 353 F. Supp. 1211, 127 (D.N.H. 1973), *aff’d*, 414 U.S. 802 (1973); *Kanapaux v. Ellisor* (D.S.C. unreported), *aff’d*, 419 U.S. 891 (1974); *Sununu v. Stark*, 383 F. Supp. 1287 (D.N.H. 1974), *aff’d*, 420 U.S. 958 (1975)), the Department’s memorandum observed that the Supreme Court “has not as yet passed on durational residence requirements for the holding of office,” *see id.*, and that lower courts have struck down laws imposing residence requirements of five or more years on certain state or local offices. *See id.* at 767-68 (collecting cases). The 1980 Justice Department memorandum therefore concluded that while certain five-year residence requirements in the 1980 proposed constitution likely would not “give rise to serious constitutional problems,” there was “every reason to question whether the courts [would] uphold” fifteen-year residence requirements for the offices of Governor and Lieutenant Governor under that proposed constitution. *See id.* at 768.

Likewise, the President observed in his message to Congress that the fifteen-year residence requirements in the 1980 constitution “may violate the Federal constitutional

on denial or abridgement of the right to vote “on account of race, color, or previous condition of servitude.” U.S. Const. amend. XV; *see also* 48 U.S.C. § 1561 (extending Fifteenth Amendment to USVI).

⁶ The proposed constitution appears ambiguous with respect to how this five-year period is determined. It provides: “There shall be an Attorney General, who shall be appointed by the Governor with the advice and consent of the Senate, and at the time of the appointment must . . . have resided in the Virgin Islands at least five (5) years next preceding his election.” *See* Proposed Const. art. VI, § 10(a)(1). Given that the Attorney General would be appointed rather than elected, the reference to the period “next preceding his election” seems unclear.

prohibition against discriminatory qualifications for public office.” 1980 Presidential Message at iv. As for Congress, the legislative history indicates that its approval of the 1980 constitution did not signify any “opinion on the merits of these provisions,” and that it too recognized that the fifteen-year “domiciliary qualifications” in that constitution might “be invalidated if they are found to be incompatible with the United States Constitution.” See H.R. Rep. No. 97-25, at 3; see also S. Rep. No. 97-66, at 5.

The case law since 1980 on durational residence requirements for state and local offices generally supports the Department’s analysis provided at that time. In *Clements v. Fashing*, 457 U.S. 957 (1982), a plurality of the Supreme Court observed that “the existence of barriers to a candidate’s access to the ballot ‘does not of itself compel close scrutiny,’” and that “[d]ecision in this area of constitutional adjudication is a matter of degree, and involves a consideration of the facts and circumstances behind the law, the interests the State seeks to protect by placing restrictions on candidacy, and the nature of the interests of those who may be burdened by the restrictions.” *Id.* at 963 (plurality opinion) (quoting *Bullock v. Carter*, 405 U.S. 134, 143 (1972)). *Clements*, however, did not involve durational residence requirements, but rather provisions requiring a waiting period or mandatory resignation before certain current state officeholders could seek new elective offices. See *id.* at 966-71. In another case, a concurring opinion, citing *Chimento*’s approval of a seven-year residence requirement for a state governor, suggested that residence requirements may serve legitimate purposes, but this opinion did not elaborate on how long a period of prior residence may be required. See *Zobel*, 457 U.S. at 70 (Brennan, J., concurring) (observing that “allegiance and attachment may be rationally measured by length of residence . . . and allegiance and attachment may bear some rational relationship to a very limited number of legitimate state purposes”).

One court of appeals has concluded, based on the Supreme Court summary affirmances cited in the Department’s 1980 memorandum, that at least “some durational residency requirements are constitutional.” *City of Akron v. Bell*, 660 F.2d 166, 168 (6th Cir. 1981). This court thus upheld a one-year residence requirement for city council members based on the local government’s interest in “knowledgeable candidates.” See *id.* at 168-69. In other recent decisions, courts have similarly upheld relatively brief residence requirements for state or local offices, typically applying only rational basis review and deeming such laws adequately justified by the governmental interest in ensuring familiarity with local concerns. See, e.g., *MacDonald v. City of Henderson*, 818 F. Supp. 303, 306 (D. Nev. 1993) (one-year residence requirement for city council); *Hankins v. Hawaii*, 639 F. Supp. 1552, 1556 (D. Hawaii 1986) (five-year residence requirement for Hawaii governor under state constitution); *Schiavone v. DeStefano*, 852 A.2d 862, 866-67 (Conn. Sup. Ct. 2001) (five-year residence requirement for city mayor); *Civil Service Merit Bd. of City of Knoxville v. Burson*, 816 S.W.2d 725, 734 (Tenn. 1991) (one-year residence requirement for municipal civil service boards); *State ex rel. Brown v. Summit County Bd. of Elections*, 545 N.E.2d 1256, 1259-60 (Ohio 1989) (two-year residence requirement for city council); *Langmeyer v. Idaho*, 656 P.2d 114, 118 (Idaho 1982) (five-year residence requirement for appointment to local planning and zoning board); see also, e.g., *Thournir v. Meyer*, 909 F.2d 408, 411 (10th Cir. 1990) (upholding under rational basis review state requirement that unaffiliated candidates have been registered as unaffiliated voters in the state for at least one year before filing for office); *White v. Manchin*, 318 S.E.2d 470, 488, 491 (W.Va. 1984) (applying strict scrutiny based on the fundamental right “to become a candidate for public office” but upholding state constitutional requirement that state senators have resided in their

district for at least one year before their election). On the other hand, at least one federal court has recently applied strict scrutiny to invalidate a state requirement that state legislators have resided within their legislative districts for at least one year. *See Robertson v. Bartels*, 150 F. Supp. 2d 691, 696, 699 (D.N.J. 2001) (applying strict scrutiny based on “the combined right of persons to run for public office and the right of voters to vote for candidates of their choice”); *see also, e.g., Pelozo v. Freas*, 871 P.2d 687, 691 (Alaska 1994) (applying heightened scrutiny under state constitution and invalidating three-year residence requirement for city council).

Insofar as the territorial status and unique history and geography of the USVI make familiarity with local issues particularly important for office-holders there, the governmental interests supporting durational residence requirements for USVI offices may be particularly strong. *See DOJ Views*, 4B Op. O.L.C. at 768; *see also, e.g., Hankins*, 639 F. Supp. at 1556 (observing that “[t]he State has a strong interest in the assurance that its governor will be a person who understands the conditions of life in Hawaii” and that “[t]his concern has ‘particular relevance in a small and comparatively sparsely populated state’” (quoting *Chimento*, 353 F. Supp. at 1215)); *cf. Bell*, 660 F.2d at 168 (noting that “the interests of [a state or local] governmental unit in knowledgeable candidates and knowledgeable voters may be served by differing lengths of durational residency requirements”). Yet at least some courts might consider the lengthy residence requirements here—particularly the ten- or fifteen-year periods required for USVI judges, Governors, and Lieutenant Governors—unjustified. *Cf. Clements*, 457 U.S. at 963 (plurality opinion) (observing that “[d]ecision in this area of constitutional adjudication is a matter of degree”); *Summit County Bd. of Elections*, 545 N.E.2d at 1260 (upholding two-year residence requirement but deeming it “conceivable that such a requirement may be too long in duration to serve a legitimate state interest”).

Accordingly, we would note that these provisions raise constitutional concerns, and we would recommend that consideration be given to shortening the ten- and fifteen-year residence requirements for USVI Governors, Lieutenant Governors, and judges. *Cf.* 1980 Presidential Message at iv, 10, 22 (recommending that 1980 proposed constitution be revised to require that the Governor and Lieutenant Governor have been domiciliaries of the USVI for ten years instead of fifteen years, even though provision required only five years of residence immediately preceding the date of taking office).

E. Potentially Unequal Legislative Districts

The proposed constitution defines electoral districts for several USVI offices, including members of the USVI Senate. The Senate, which would serve as the USVI’s unicameral legislature, would include between eleven and fifteen members. *See Proposed Const. art. V, §§ 1, 2(a)*. Beginning with the first election in 2012, the Senate would consist of: (1) six Senators elected “at large” by the Islands as a whole, three of whom must be residents of St. Croix and three of whom must be residents of St. Thomas or St. John; (2) two Senators elected from each of two sub-districts on St. Croix; (3) two elected from each of two sub-districts on St. Thomas; and (4) one elected from St. John. *Id. art. V, § 2(a)(1)*. At least once every ten years and within 120 days of the publication of the official census for the Islands, the Senate would be required to appoint a “reapportionment commission,” which would develop a plan, to be approved by the USVI Supreme Court, for the reapportionment of “At-Large and sub-district

senate seats that are contiguous and compact areas.” *Id.* art. V, § 2(b).⁷ Although the proposed constitution provides that the areas in these districts “shall be constituted as to give, as nearly as is practicable, representation in proportion to the census population,” the plan also would be required to “provide for at least one Senator from St. John.” *See id.* art. V, § 2(b). These provisions, particularly the reservation of a Senate seat for St. John, raise equal protection concerns because they may prove to be at odds with the principle of “one person one vote.”

The Supreme Court has held that the Equal Protection Clause of the Fourteenth Amendment requires states to “make an honest and good faith effort to construct districts [for legislative representatives] as nearly of equal population as is practicable.” *Larios v. Cox*, 300 F. Supp. 2d 1320, 1339 (N.D. Ga. 2004) (quoting *Reynolds v. Sims*, 377 U.S. 533, 556 (1964)), *aff’d*, *Cox v. Larios*, 542 U.S. 947 (2004). As noted above, this requirement is applicable to the USVI by statute. *See* 48 U.S.C. § 1561; *Moolenaar v. Todman*, 433 F.2d 359, 359 (3d Cir. 1970) (per curiam). Accordingly, insofar as the islands comprising the USVI have (or later develop) populations significantly disproportionate to the number of seats reserved for them in the Senate, the provisions for specified geographic representation may be subject to challenge for violating this “one person one vote” requirement of equal protection.

The Supreme Court has established a burden-shifting framework for evaluating “one person one vote” claims based on the deviation in population per representative between the most overrepresented and the most underrepresented electoral districts in a jurisdiction, factoring in at-large representatives. *See, e.g., Bd. of Estimate of N.Y. City v. Morris*, 489 U.S. 688, 701-02 & n.9 (1989); *Brown v. Thomson*, 462 U.S. 835, 842-43 (1983). As a general rule, “an apportionment plan with a maximum population deviation under 10%” constitutes only a “minor deviation from mathematical equality” and is “insufficient to make out a prima facie case of invidious discrimination under the Fourteenth Amendment.” *Brown*, 462 U.S. at 842 (quoting *Gaffney v. Cummings*, 412 U.S. 735, 745 (1973)). Districting plans with such deviations may not be “automatically immune from constitutional attack,” but they are at least “presumptively constitutional, and the burden lies on the plaintiffs to rebut that presumption.” *Larios v. Cox*, 300 F. Supp. 2d at 1340-41; *see also Cox v. Larios*, 542 U.S. at 949 (Stevens, J., concurring) (describing Court’s summary affirmance as “properly reject[ing]” the defendants’ “invitation” to “creat[e] a safe harbor for population deviations of less than 10 percent”). “A plan with larger disparities in population . . . creates a prima facie case of discrimination and therefore must be justified by the State.” *Brown*, 462 U.S. at 842-43; *see also Voinovich v. Quilter*, 507 U.S. 146, 160-62 (1993). Legitimate justifications for a disparity may include preserving the integrity of political subdivisions or recognizing natural or historical boundaries, *see DOJ Views*, 4B Op. O.L.C. at 766 (citing *Reynolds v. Sims*, 377 U.S. 533, 580-81 (1964); *Swann v. Adams*, 385 U.S. 440, 444 (1967)), and the Supreme Court has upheld even a sizeable deviation from population equality in light of “the importance, consistency, and neutrality of the state policies alleged to require the population disparities.” *Brown*, 462 U.S. at 848 (Stevens and O’Connor, JJ., concurring). On the other hand, the Court has cautioned that “[e]ven a neutral and consistently applied criterion such as use of counties as representative districts can frustrate *Reynolds*’ mandate of fair and effective representation if the population disparities are excessively high.” *Id.* at 845.

⁷ Article V, § 2(b) refers to a plan for “reappointment” rather than “reapportionment.” We assume this is a typographical error.

The 1980 proposed constitution similarly required a representative from St. John in the USVI Senate. *See* 1980 Constitution art. V, §§ 2, 3. With respect to this requirement, the Justice Department concluded: “[w]hether such a [“one person one vote”] violation would ultimately occur would likely turn on specific facts in existence at the time.” *DOJ Views*, 4B Op. O.L.C. at 766. That statement remains true today. But according to the Attorney General of the USVI, data from the 2000 census indicate that the St. John’s senate district would involve a deviation of 53% from the ideal of equal representation. *See* USVI AG Op. at 13.

The USVI’s island geography and any historic political representation for St. John might help justify the inequalities between districts. *See, e.g., Travis v. King*, 552 F. Supp. 554, 560 (D. Hawaii 1982) (concluding “[b]ased on the unique geographic and economic insularity of the four basic island units,” that the objective of providing each main island of Hawaii “meaningful representation” in the state legislature was “a rational one”); *Burns v. Gill*, 316 F. Supp. 1285, 1292, 1293, 1299 (D. Hawaii 1970) (upholding disparities between electoral districts in Hawaii based on the “conclusion that if [Hawaii’s] voters are to have functional representation in their State legislature each basic island unit must be given meaningful recognition therein”). Indeed, the Revised Organic Act, though permitting reapportionment “as provided by the laws of the Virgin Islands,” initially provided for separate representation of St. John in the USVI Senate. *See* 48 U.S.C. § 1571(b); *see generally Moolenaar v. Todman*, 317 F. Supp. 226, 229-30 (D.V.I. 1970) (describing historical enactments regarding representation in USVI Senate), *rev’d*, 433 F.2d 359 (3d Cir. 1970) (per curiam). We understand, however, that at present the USVI legislature does not include a Senator elected solely by St. John voters; the USVI Senate, rather, includes seven Senators from the District of St. Croix and seven from the District of St. Thomas/St. John, plus one Senator elected at large who must be a resident of St. John. *See* Legislative History, Legislature of the Virgin Islands, *available at* <http://www.legvi.org/LEGVI2008/history.htm>. Insofar as guaranteed representation for St. John is a departure from current or historic practice, or if disparities are simply too large to be justified by such historic practices, the USVI’s senatorial districts under the proposed constitution might be subject to an equal protection challenge. For example, the court in *Travis v. King* rejected a districting plan for the Hawaii state senate with a 43.18% total deviation even though the state invoked the need for separate representation of the state’s island units as a justification for the disparity. *See* 552 F. Supp. at 560, 562-63; *see also, e.g., Bd. of Estimate of N.Y. City*, 489 U.S. at 702-03 (concluding that “accommodat[ion] [of] natural and political boundaries as well as local interests” was insufficient to justify a 78% disparity in representation of New York City’s five boroughs on a municipal board).

Because any challenge to USVI’s Senate districts would be fact-specific, we do not recommend specific changes to the proposed constitution to address these concerns. Indeed, we note that although the Justice Department indicated potential “one person one vote” concerns with respect to the 1980 proposed constitution, *see DOJ Views*, 4B Op. O.L.C. at 766, the President did not communicate such concerns to Congress in his transmittal message. *See* 1980 Presidential Message at iii-v. As in the 1980 Justice Department memorandum, however, we would note the potential litigation risk posed by these provisions.

F. Territorial Waters, Marine Resources, and Submerged Lands

Article XII, Section 2, concerning “Preservation of Natural Resources,” states:

The Government shall have the power to manage, control and develop the natural and marine resources comprising of submerged lands, inlets, and cays; to reserve to itself all such rights to internal waters between the individual islands, claim sovereignty over its inter-island waters to the effect that the territorial waters shall extend 12 nautical miles from each island coast up to the international boundaries. This is an alienable right of the people of the Virgin Islands of the U.S. and shall be safeguarded.

The intended meaning and effect of this provision are not entirely clear. To the extent that its reference to a claim of “sovereignty” over coastal waters is intended to derogate from the sovereignty of the United States over those waters, it is inconsistent with federal law and should be removed. *See* Proclamation No. 5928, 54 Fed. Reg. 777 (Jan. 9, 1989) (proclamation of U.S. territorial sea). In addition, by statute, the United States has, subject to certain exceptions, conveyed to the USVI its right, title, and interest in submerged lands and mineral rights in those submerged lands out to three miles. *See* 48 U.S.C. §§ 1705, 1706 (2006); *see also, e.g.*, Proclamation No. 7399, 66 Fed. Reg. 7364 (Jan. 22, 2001) (proclamation of Virgin Islands Coral Reef National Monument). Any assertion of USVI control over submerged lands and mineral rights beyond those federal statutory limits would be inconsistent with federal law and should be removed. Federal law also reserves to the United States exclusive management rights over fisheries within the “exclusive economic zone.” *See* 16 U.S.C. § 1811(a) (2006). Again, the proposed constitution must be made consistent with this federal statutory mandate. While the final sentence of Article XII, Section 2 acknowledges that the rights it addresses are alienable, we recommend modifying this language to make clearer that these matters are subject to Congress’s plenary control.

G. Bill of Rights Provisions

As required by the Enabling Act, the proposed constitution includes a bill of rights. *See* Proposed Const. art. I; Enabling Act § 2(b)(3). Consistent with the supremacy of federal law, we understand these provisions as not purporting to constrain the Federal Government or federal law but as constraining only the USVI local government that would be established by this constitution and local laws.

In its memorandum on the 1980 proposed constitution, the Department of Justice observed that some provisions of the bill of rights and related sections in that constitution were not “drafted with adequate clarity and precision” and might therefore “result in litigation that could burden or curtail effective local government.” *See DOJ Views*, 4B Op. O.L.C. at 761. The same could be said of a number of provisions in the current proposed constitution. For example, the current proposed constitution, like its 1980 predecessor, includes protections of unclear scope for the “dignity of the human being,” the “right to a reasonable expectation of privacy,” and the “right to examine any public document and to observe the deliberation of any agency of government.” Proposed Const. art. I, §§ 1, 3, 4. The constitution also prohibits “employment of children” in certain occupations without specifying the maximum age of a “child,” *id.* art. I,

§ 11(e); *see also id.* art. XII, § 1 (indicating that “[t]he Government shall establish laws to govern the employment of children under the age of fifteen”); and it fails to specify whether many of the rights it establishes apply only to government actors or also to intrusions by private parties. *See DOJ Views*, 4B Op. O.L.C. at 761-63.

In 1980, the President declined to recommend changes to address such concerns. He observed:

I believe there are some provisions in the constitution that will require interpretation by the courts. . . . However, I do not feel it is appropriate for me to question the wisdom of entrusting the interpretation of these provisions to the courts. This is a matter for serious discussion by the people of the Virgin Islands, for this document should truly be one of their own making.

1980 Presidential Message at v. Because the same could be said of unclear provisions in the bill of rights and related sections of the current proposed constitution, we do not address such provisions in detail or recommend particular changes, but simply note the potential for uncertainty and litigation.

H. Repeal of Organic Statute Provisions

We also note that because federal law is superior to territorial enactments and may preempt contrary provisions of territorial law, Congress may need to repeal certain provisions of the USVI’s organic statutes to enable this proposed constitution to operate, assuming it is approved by Congress and the USVI voters. *Cf. DOJ Views*, 4B Op. O.L.C. at 771 (noting that a provision of the 1980 proposed constitution repealing laws, executive orders, and regulations inconsistent with the proposed constitution would be invalid if applied to “matters over which the Federal Government retained jurisdiction”); 1980 Presidential Message at v (noting that this transitional provision of the 1980 constitution “could exceed the authority of the Constitutional Convention if it is read to affect Federal law”). Some federal regulations and Executive Orders may also need to be revised or revoked. The legislative history of the Enabling Act contemplates the submission by the President of a list of provisions requiring repeal “as a part of his comments on the constitution.” *See* S. Rep. No. 94-1033, at 4. In 1980 the President, however, did not transmit such a list as part of his comments on the 1980 proposed constitution, but rather “indicated that [he] [would] submit the list in a timely manner to enable the Congress to effect the repeals prior to the effective date of the constitution.” S. Rep. No. 97-66, at 4.

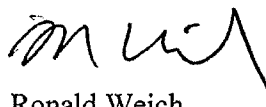
I. Effect of Congressional Action or Inaction on the Proposed Constitution

Finally, the Enabling Act, as noted, provides that a proposed USVI constitution “shall be deemed to have been approved” if Congress takes no action on it within sixty legislative days after its submission by the President. Enabling Act § 5. In 1978, Congress took no action on the proposed USVI constitution, which was then submitted to the USVI voters pursuant to the Enabling Act. *See DOJ Views*, 4B Op. O.L.C. at 760 & n.1, 772. In contrast, Congress expressly approved, by joint resolution, a modified version of the 1980 proposed constitution “for submission to the people of the Virgin Islands in accordance with the provisions of” the Enabling Act. *See* Pub. L. No. 97-21, 95 Stat. at 105.

As the Justice Department's 1980 memorandum explained, congressional inaction does not satisfy the constitutional requirements of bicameralism and presentment for valid federal legislation and therefore "cannot have any legal effect, except as . . . the occurrence of a condition which permits the submission of the constitution to the qualified electors of the Virgin Islands." *DOJ Views*, 4B Op. O.L.C. at 772. Such inaction therefore "would not have any curative effect on the defects of the constitution." *Id.* In fact, even formal approval of the proposed constitution need not be construed as federal endorsement of any constitutionally defective or otherwise invalid provisions. Upon signing the joint resolution approving the revised 1980 proposed constitution, President Reagan observed: "This legislation approves referring the constitution to the voters of the Virgin Islands for referendum. It does not represent a Federal endorsement of the constitution's substantive provisions." Statement on Signing a Bill To Approve a Constitution for the United States Virgin Islands, 1981 Pub. Papers 617, 617 (July 10, 1981). The legislative history indicates that Congress shared the same view. *See* S. Rep. No. 97-66, at 5 (expressing "no opinion on the advisability or merits of any provisions in the proposed constitution"); H.R. Rep. No. 97-25, at 3 (expressing "no opinion on the merits" of certain potentially invalid provisions because the committee "believe[d] that this is a matter to be considered by the voters, or perhaps, at some future time, by the courts").

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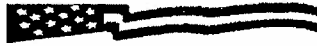
Please let us know if we may be of further assistance.



Ronald Weich
Assistant Attorney General for Legislative Affairs



Fifth Constitutional Convention of the Virgin Islands
1 Lagoon Street Complex, Legislature Building,
Frederiksted, Virgin Islands 00840
StX Tel: 340-712-2229 Fax: 340-718-8661



May 31, 2009

The Honorable John P. de Jongh, Jr.
Governor
United States Virgin Islands
King Street
St. Croix, VI 00820

Re: Fifth Constitutional Convention
Transmittal of the Adopted Proposed Constitution of the United States Virgin Islands

Dear Governor de Jongh:

It is my pleasure to submit to you the Proposed Constitution of the United States Virgin Islands that was adopted by the Fifth Constitutional Convention by a two-thirds vote on May 26, 2009. I submit this document to you in accordance with the provisions of Public Law 94-584, section 4 and Act No. 6688 of the Legislature of the Virgin Islands of the United States as amended.

Sincerely yours,

Gerard Luz James II
President Fifth Constitutional Convention

cc: Legislature of the Virgin Islands
of the United States
Fifth Constitutional Convention

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**THE CONSTITUTION OF THE
VIRGIN ISLANDS OF THE UNITED STATES
FIFTH CONSTITUTIONAL CONVENTION**

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PREAMBLE

7 We, the people of the Virgin Islands, grateful to Almighty God for our creation,
8 preservation, freedom, and Divine Guidance, mindful of our Virgin Islands heritage and
9 uniqueness, assuming the responsibilities of self-government as an unincorporated
10 territory of the United States, in order to promote more unity among our islands for
11 ourselves and our posterity, promote the general welfare, protect the fundamental rights
12 and freedoms of the individual, ensure political, social and economic justice, maintain a
13 republican form of government, protect our culture and natural resources, and preserve
14 the identity of the Virgin Islands.

16 Whereas we recognize the original indigenous peoples who inhabited these islands. We
17 especially recognize the significant hardships endured by the enslaved Africans during
18 the period of European colonial rule which precipitated the 1733 revolution on St. John,
19 the successful 1848 Emancipation Insurrection, the 1878 Fireburn on St. Croix, and the
20 1892 Coal Workers' Strike on St. Thomas.

22 Whereas the transfer of the former Danish West Indies to the United States of America
23 through the Treaty of Cession of 1917 confirmed that the civil rights and political status
24 of the inhabitants of the islands shall be determined by the United States Congress.

26 Whereas the adoption of the mass naturalization acts of 1927 and 1932 identified the
27 natives of the Virgin Islands who resided in the islands on January 17, 1917, and whose
28 descendents are ancestral native Virgin Islanders.

30 Whereas we acknowledge the enormous contributions to the socio-economic and political
31 development of the Virgin Islands by those who migrated to the territory from countries
32 of the wider Caribbean, who endured significant hardships as a result of prevailing U.S.
33 immigration and labor laws, and who came to form an integral part of the Virgin Islands
34 society; we especially recognize those who migrated from Puerto Rico, the French,
35 Dutch, and the British West Indies whose contributions have been integral to the
36 political, economic and social development of Virgin Islands society.

38 Whereas the applicability of the United Nations Charter confirms the principle of equal
39 rights and self-determination of peoples and the requirement for the development of full
40 self-government; we affirm that the establishment of local constitutional self-government
41 pursuant to this Constitution shall not preclude or prejudice the further exercise by the
42 people of the Virgin Islands of the right of self-determination regarding the attainment of
43 a permanent political status; Now Therefore, we do ordain and establish this Constitution.

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ARTICLE I BILL OF RIGHTS

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Section 1 Fundamental Rights

48 (a) The dignity of the human being is inviolable. No person shall be deprived of life,
49 liberty or property without due process of law or be denied the equal protection of the
50 laws. Legislative measures designed to protect or assist persons or categories of persons,
51 disadvantaged by discrimination may be undertaken.

1
2 (b) No person shall be discriminated against on account of race, color, sex, gender, sexual
3 orientation, place of birth, socio-economic class, origin, political religious belief, age or
4 disability.
5

6 **Section 2 Freedom of Religion, Speech, Press, Assembly and Petition**

7 No law shall be enacted respecting an establishment of religion, or prohibiting the free
8 exercise thereof, or abridging the freedom of speech or of the press, or the right of the
9 people to assemble peaceably, or the right to petition the Government for the redress of
10 grievances.

11 **Section 3 Right of Privacy**

12 A person has the right to a reasonable expectation of privacy in the conduct of personal
13 affairs and communications and it shall not be infringed.

14 **Section 4 Right to Know**

15 A person shall have the right to examine any public document and to observe the
16 deliberation of any agency of government subject only to exceptions provided by law and
17 the right of individuals to privacy in their personal affairs.

18 **Section 5 Searches and Seizures**

19 A person shall have the right, subject only to warrant, to be secure in their person,
20 dwelling, papers, possessions and privacy, and such right shall not be abridged by
21 unreasonable search and seizure. No warrant for arrest or search shall be issued except
22 upon probable cause, supported by oath or affirmation, and particularly describing the
23 place to be searched, thing to be seized, or person to be arrested. Evidence obtained in
24 violation of the rights of the accused shall not be admissible as affirmative evidence
25 against the accused in a criminal trial.

26 **Section 6 Rights of the Accused**

27 (a) In all criminal prosecutions, the accused shall be presumed innocent unless and until
28 proven guilty beyond a reasonable doubt, shall have the right to a speedy, public trial, and
29 trial by impartial jury, where the penalty may be imprisonment for more than six months;
30 to be informed of the nature and cause of the accusation, to have the assistance of
31 counsel, and where the accused may be imprisoned, the assistance of counsel at public
32 expense, if necessary; to have compulsory process for obtaining witnesses, and to
33 confront the witnesses against the accused.

34 (b) Any person who is subjected to a custodial police interrogation shall, before he is
35 questioned, be advised that he has a right to remain silent, that any statement that he
36 makes may be used as evidence against him, and that he has the right to the presence of
37 an attorney, either retained or appointed.

38 (c) Excessive bail shall not be required, nor excessive fines imposed, nor cruel or unusual
39 punishment inflicted. All persons shall be presumed to be bailable, and such presumption
40 shall be overcome only by a preponderance of the evidence, established by the
41 Government that the accused may flee the jurisdiction or that the granting of bail would
42 constitute a danger to the community.

43 (d) No person shall be twice put in jeopardy for the same offense or be compelled in any
44 criminal case to be a witness against himself. The failure of an accused to testify shall not
45 be taken into consideration or commented upon to the detriment of the accused.

1 (e) All civil rights may be restored to a person convicted of an offense upon the
2 completion of any sentence served and any period of probation or parole, subject to
3 reasonable limitation as may be proscribed by law.

4
5 **Section 7 Rights of Victims**

6 Victims of crime shall have the right to be treated with fairness, respect, dignity, and be
7 free from intimidation, harassment, or abuse throughout the criminal justice process.
8 Subject to reasonable limitations imposed by law, victims shall be informed and allowed
9 to be present and to be heard during all sentencing, probation or parole hearings
10 involving the crime; including the right to file a "Victim Impact Statement," as provided
11 by law. They shall have the right to receive the return of any property taken during the
12 investigation or recovered, returned as soon as possible after trial.

13 **Section 8 Prohibition of Slavery**

14 Slavery and involuntary servitude are prohibited, except in the latter case as a punishment
15 for crime after the accused has been duly convicted.

16 **Section 9 No Imprisonment for Debt**

17 No person shall be imprisoned or suffer forced labor for debt.

18 **Section 10 Habeas Corpus**

19 All persons have the right to apply for a writ of habeas corpus and such shall not be
20 unreasonably denied.

21 **Section 11 Labor**

22 (a) All persons shall have the right to organize and bargain collectively, strike, picket,
23 and engage in other lawful concerted activities subject to reasonable limitations to protect
24 health, welfare, and safety.

25 (b) Public employees engaged in services essential to the public health or safety may
26 have the right to strike in accordance with law.

27 (c) All public and private employees shall have the right to equal pay for equal work:
28 provided, however, that the phrase equal pay for equal work shall not be construed as
29 requiring the equality of salaries, compensation, or benefits between public employees
30 doing substantially equal work represented by different labor organizations; and shall not
31 prohibit differentials based upon differences in experience, skills and seniority.

32 (d) All employees shall have the right to reasonable protection against injuries in work or
33 employment.

34 (e) The employment of children in any occupation injurious to their health, morals, or
35 general welfare, or which places them in jeopardy of life or limb is prohibited.

36 (f) No employee or applicant shall be forced to waive any employment laws.

37 **Section 12 Protection of Property**

38 Private property shall not be taken for public use without the payment of just
39 compensation. Private property shall only be taken for a substantial and direct public
40 benefit.

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42 **Section 13 Restrictions of Legislation**

43 No ex post facto law, bill of attainder, or law impairing the obligation of contracts shall
44 be enacted.

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2 **Section 14** **Quartering of Militia**
3 No militia, in time of peace or in time of war, shall be quartered in any house without the
4 consent of the owner, except as provided by law.

5 **Section 15** **Trial by Jury**
6 Trial by jury shall be preserved, but the trial of civil causes by a jury of not less than six
7 persons may be authorized by law.

8 **Section 16** **Right To a Healthful Environment**
9 Every person has the right to a reasonably healthful environment and the enforcement of
10 the right as may be provided by law.

11 **Section 17** **Right Against Capital Punishment**
12 A person shall not be subject to capital punishment.

13 **Section 18** **Marriage**
14 Marriage is the legal union between man and woman.

15 **Section 19** **Protection of Children**
16 Children shall be protected from harm, exploitation, neglect, abuse, maltreatment or
17 degradation and nurtured for their growth and development.

18 **Section 20** **Reservation and Implementation of Rights**
19 The preceding enumeration of rights shall not be construed restrictively nor shall it be
20 construed to deny or disparage other rights retained by the people. The Government shall
21 provide by law for the implementation and enforcement of this Article.

22 **ARTICLE II PRINCIPLES OF GOVERNMENT**

23 **Section 1** **Form of Government**
24 The Government of the Virgin Islands shall be republican in form and shall consist of
25 three (3) branches: Legislative, Executive and Judicial.

26 **Section 2** **Symbols of the Virgin Islands**
27 An anthem, flag, seal, bird, flower, fish, and tree of the Virgin Islands, which shall
28 symbolize the history and culture of the people, shall be provided by law. Within one
29 year of the effective date of this Constitution, the Senate shall provide for the
30 implementation of this section by public referendum. Once established by law, the
31 anthem, flag, seal, bird, flower, fish and tree shall be incorporated and considered a part
32 of this Constitution.

33 **Section 3** **Capital of Government**
34 The capital of the Virgin Islands shall be the City of Charlotte Amalie.

35
36 **Section 4** **Ethical Standards-Officers and Employees**
37
38 Officers and employees of the Government shall be devoted to serving the public interest
39 and shall observe and maintain the highest ethical standards. A code of ethics applicable
40 to all public officers and employees shall be established by law.
41

1 **Section 5 Supreme Law of the Virgin Islands**

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3 This Constitution shall be the supreme law of the Virgin Islands.

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5 **ARTICLE III VIRGIN ISLANDER**

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7 **VIRGIN ISLANDERS**

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9 **Section 1 Ancestral Native Virgin Islander**

10 An Ancestral Native Virgin Islander is:

- 11 (a) a person born or domiciled in the Virgin Islands prior to and including
12 June 28, 1932 and not a citizen of a foreign country pursuant to 8 U.S.C.
13 1406 in its pertinent part, and his/her descendants; and
14 (b) descendants of an Ancestral Native Virgin Islander residing outside of
15 the U.S., its territories and possessions between January 17, 1917 and
16 June 28, 1932, not subject to the jurisdiction of the U.S. and who are not
17 a citizens or a subjects of any foreign country.

18 **Section 2 Native Virgin Islander**

19 A Native Virgin Islander is:

- 20 (a) a person born in the Virgin Islands after June 28, 1932, and
21 (b) descendants of a person born in the Virgin Islands after June 28, 1932.

22 **ARTICLE IV SUFFRAGE AND ELECTIONS**

23 **Section 1 Right to Vote**

24 Every citizen of the United States and the Virgin Islands eighteen (18) years of age or
25 older and registered to vote in the Virgin Islands shall have the right to vote. No other
26 qualifications or requirements may be imposed except a period of residency may be
27 required by law. Persons who are adjudged mentally incompetent or who serve a
28 sentence after conviction of a felony may be disqualified from voting.

29 **Section 2 Regular General Election**

30 The regular general election of the Virgin Islands shall be held on the first Tuesday
31 following the first Monday in November in each even numbered year. All executive
32 branch officers and members of the Senate shall be elected at a regular general election.
33 Other elections, initiative, referenda, and matters with respect to election procedures shall
34 be as provided by law.

35 **Section 3 Date of Taking Office**

36 The Governor and Lieutenant Governor elected in a regular general election shall take
37 office the first Tuesday following the first Monday in January following the election. All
38 other public officials elected at the regular general election shall take office as provided
39 by law.

40 **Section 4 Oath of Affirmation**

41 No political or religious test, other than an oath or affirmation to support the Constitution
42 and laws of the Virgin Islands, and the Constitution and laws of the United States, shall
43 be required as a qualification for public office.

1 Thomas, and one elected from St. John. Senators shall be residents of the
2 sub-districts from which elected, and shall be elected by the electors of
3 that sub-district.

4 (2) Senators elected At-large shall be elected for a term of four (4) years
5 and Senators elected by sub-districts shall be elected for a term of two (2)
6 years.

7 (b) At least once every ten (10) years and within one hundred and twenty
8 days (120) of publication of an official census, the Senate shall appoint a
9 reapportionment commission. The commission shall provide a plan for
10 the reappointment of At-Large and sub-district senate seats that are
11 contiguous and compact areas. The areas shall be constituted as to give,
12 as nearly as is practicable, representation in proportion to the census
13 population. The plan shall provide for at least one Senator from St. John.
14 If the Senate fails to establish a reapportionment commission in
15 accordance with this section within one hundred and twenty (120) days
16 of the release of the official census or if the Senate fails to reapportion
17 within two hundred and forty (240) days of the release of the official
18 census, the Supreme Court shall have original and exclusive jurisdiction
19 to promulgate and enact a reapportionment plan.

20 **Section 3 Qualifications of Senators**

21 A Senator shall be:

- 22 a) An elector of the Virgin Islands,
- 23 b) At least 18 years of age,
- 24 c) Domiciled in the legislative district or sub-district for at least one year
25 immediately preceding the first date of filing for office, and
- 26 d) Be a citizen of the United States and the Virgin Islands.

27 **Section 4 Restriction of Activities**

28 Activities of Members of the Senate shall be restricted as follows:

- 29 a) Until such time as Local Government is implemented, Senators shall
30 devote their full time to their duties and not (1) engage in any
31 employment, trade, or profession, and (2) not hold any other paid public
32 position unless authorized specifically by law.
- 33 b) Upon the implementation of Local Government the Compensation
34 Commission, established herein, shall adjust the compensation of
35 Senators commensurate with the required service.
- 36 c) Within one year of leaving the Senate, a Senator shall neither be
37 appointed to any salaried public position which was created by the
38 Senate during the previous term nor benefit from any compensation
39 which was increased by the Senate during the Senators last term of office

1 unless the salary change was recommended by the Compensation
2 Commission on Legislative, Executive and Judicial Salaries.

3 **Section 5 Vacancy**

4 If a vacancy occurs in the Senate, the President of the Senate shall, within thirty (30)
5 days, appoint the next available person from among those candidates considered in the
6 order of the highest number of votes received for that seat in the last election. If there is
7 no available candidate, the vacancy shall be filled as provided by law.

8 **Section 6 Legislative Immunity**

9 A Senator shall not be held to answer in any place except the Senate for a statement made
10 in any Senate proceeding. A Senator shall, except in cases of treason, felony, or breach
11 of the peace, be privileged from arrest in the Senator's travel to, from or during a session
12 of the Senate.

13 **Section 7 Organization and Procedure**

14 A majority of the Senate shall constitute a quorum. The Senate shall have all authority
15 inherent in a legislative assembly; shall be the judge of the qualifications of its members,
16 and shall have the power to institute and conduct investigations, issue subpoenas, and
17 administer oaths. The Senate, upon the vote of two-thirds (2/3) of its members, may
18 discipline any member for cause. The Senate shall maintain a daily journal of its
19 proceedings, which shall include a record of all votes taken and shall be published within
20 thirty (30) days and made available to the public upon request.

21 **Section 8 Regular and Special Sessions**

22 Sessions of the Senate:

- 23 (a) The first Regular sessions of each term of the Senate shall be held in the
24 capital of the Virgin Islands beginning on the second Monday in January.
- 25 (b) A special session of the Senate may be called by the Governor or by the
26 President of the Senate upon request by two-thirds (2/3) of its members.
27 Only the business specified in the call shall be considered at a special
28 session.
- 29 (c) All sessions of the Senate shall be open to the public.

30 **Section 9 Enactment of Laws**

31 Senate shall have the authority to enact laws:

- 32 (a) A law may be enacted only by bill, and a bill shall not be enacted unless
33 it is circulated, read, and passed by a majority of the members present.
34 The full text of each bill or amendment must be read in its entirety at
35 least once during legislative consideration. This reading can only be
36 waived by a three quarters majority of all members present.
- 37 (b) Each bill passed by the Senate shall be presented to the Governor. If the
38 Governor signs or fails to return a bill within ten days (Sundays
39 excepted) of presentation, it shall become law. If the Governor vetoes a
40 bill, it shall be returned to the Senate within ten days (Sundays excepted)
41 of its presentation with a statement of reasons for the veto. The Governor
42 may veto an item of an appropriation bill and sign the remainder of the
43 bill, in which event the vetoed item shall be returned to the Senate within

- 1 ten days (Sundays excepted) of its presentation with a statement of
2 reasons for the veto.
- 3 (c) A bill or section of an appropriation bill vetoed by the Governor may be
4 reconsidered by the Senate upon the motion of any Senator no later than
5 the end of the next legislative session and shall become law as originally
6 passed upon a vote of two-thirds of the Senate.
- 7 (d) The Senate shall pass a balanced budget. The Senate is authorized to
8 consider and pass biennial budgets.
- 9 (e) All senatorial documents, including draft bill proposals, shall be open
10 public records subject to the open records act of the Virgin Islands.

11 **Section 10 Impeachment**

12 The Senate may impeach for cause any elected official upon a vote of two-thirds (2/3) of
13 its members. The Supreme Court shall determine, by a vote of two-thirds (2/3), whether
14 to remove from office an elected official impeached by the Senate, and a person so
15 removed shall not be immune from criminal charges or civil action.

16 **ARTICLE VI EXECUTIVE BRANCH**
17 **EXECUTIVE POWER AND AUTHORITY**

18 The Executive power and authority of the Virgin Islands are vested in the Governor.

19 **Section 1 Composition; Officers Enumerated**

20 There shall be an executive branch composed of a Governor, Lieutenant Governor,
21 executive departments and agencies.

22 **Section 2 Election of Executive Officers**

23 The Governor and Lieutenant Governor shall be elected jointly by the electors of the
24 Virgin Islands upon receiving a majority of the votes cast. Runoff elections shall be as
25 provided by law. A Governor may not serve more than two successive full terms and
26 may not serve as Lieutenant Governor immediately following two successive full terms.

27 **Section 3 Qualifications for Governor and Lieutenant Governor**

28 The Governor and Lieutenant Governor each shall:

- 29 (a) be an elector of the Virgin Islands for at least ten (10) years,
30 (b) be at least thirty-five (35) years of age,
31 (c) be a domiciliary of the Virgin Islands for at least fifteen (15) years, ten
32 (10) of which must immediately precede the date of filing for office,
33 (d) be an Ancestral or Native Virgin Islander, and
34 (e) not have dual citizenship.

35 **Section 4 Powers and Duties of the Governor**

- 36 (a) The Governor shall:
37 (1) exercise full authority over the executive branch except as otherwise
38 provided by this Constitution and shall be responsible for the faithful
39 execution of the laws of the Virgin Islands;
40 (2) after obtaining a background investigation on the candidate and with
41 the advice and consent of a majority of the Senate, appoint all executive

- 1 department heads. Any nomination not acted upon by the Senate within
2 60 working days after the receipt of the nomination shall be deemed to
3 have received the advice and consent of the Senate;
- 4 (3) report, no later than the 31st of January of each year, to the Senate on
5 the state of the Territory and, may at any time, recommend bills or other
6 measures for actions by the Senate. Within six months of taking office,
7 the Governor shall present a plan to the Senate that outlines his goals for
8 the Territory;
- 9 (4) prepare and submit to the Senate, at a time prescribed by law, a
10 balanced budget for the ensuing fiscal year. The budget shall state the
11 estimated funds available for appropriation and the estimated receipts,
12 expenditures, and obligations for every department, agency, and
13 government instrumentality. The budget shall also be summarized per
14 District. The budget shall state the public debt and contingent liabilities
15 and shall include biennial projections and other information as may be
16 required by law; and
- 17 (5) have the power to issue executive orders consistent with the law.
- 18
- 19 (b) Except in cases of impeachment, the Governor shall have the power to
20 grant reprieves, commutations and pardons. Each exercise of this power
21 shall be reported to the Senate, to the public and if practicable to the
22 victim or victim' s immediate family.
- 23 (c) In the event of a natural disaster, invasion, or insurrection, or imminent
24 danger thereof, the Governor may call out the militia or, when the public
25 safety requires, proclaim martial law. Upon such proclamation, the
26 Senate shall meet forthwith and may, upon the affirmative vote of two-
27 thirds (2/3) of its members, revoke the proclamation of martial law then
28 or at any other time. During an emergency, the Governor may order the
29 executive branch to be moved temporarily.
- 30 (d) The Governor shall execute such other functions, powers, and duties of
31 the executive branch offices, agencies, and instrumentalities as may be
32 provided by law.

33 **Section 5 Powers and Duties of the Lieutenant Governor**

34 The Lieutenant Governor shall have custody of the seal of the Virgin Islands, shall
35 countersign and affix the seal to official documents, record and preserve the laws of the
36 Virgin Islands, and have additional such other duties as may be assigned by the Governor
37 or provided by law.

38 **Section 6 Official Residences**

39 The official residence of the Governor and Lieutenant Governor shall be in the Virgin
40 Islands. The Governor and Lieutenant Governor, at the expense of the government, shall
41 be provided appropriate housing and utilities in properties owned by the Government at
42 the time of their initial election.

43

1 **Section 7** **Restrictions on Activities**

2 The Governor and Lieutenant Governor shall devote full time to their duties and not (1)
3 engage in any employment, trade, or profession, or (2) not hold any other paid public
4 position unless specifically authorized by law.

5 **Section 8** **Order of Succession**

6 In the case of the temporary or permanent disability of the Governor or Lieutenant
7 Governor, the position shall be replaced in the following order of succession to the office,
8 the Lieutenant Governor, the President of the Senate, Vice-President of the Senate, and
9 such other public official of the Virgin Islands as may be designated by law.

10 **Section 9** **Disability and Permanent Vacancy of Elected Officials**

11 (a) The Governor or Lieutenant Governor shall declare a disability to
12 discharge the duties of office by transmitting to the Senate a written
13 declaration of disability. In the event of the temporary disability of the
14 Governor, the Lieutenant Governor shall act as Governor. If the
15 Lieutenant Governor is unable to act as Governor, the order of succession
16 shall be the President of the Senate, Vice-President of the Senate, and
17 such other public official of the Virgin Islands as may be designated by
18 law. The Governor or Lieutenant Governor shall resume office upon
19 submitting a written declaration of termination of the disability.

20 (b) Upon the affirmative vote of two-thirds (2/3) of its members, the Senate
21 may raise the question of the temporary or permanent disability of any
22 elected official. The Supreme Court of the Virgin Islands shall determine
23 all questions raised by the Senate or otherwise raised, as provided by law,
24 with respect to the temporary or permanent disability of any elected
25 official.

26 (c) If the Supreme Court declares a vacancy in an executive branch office
27 due to permanent disability then the vacancies in the following offices
28 shall be filled as follows:

29 (1) Governor or Lieutenant Governor - the order of succession shall be
30 followed.

31 (2) Attorney General or Inspector General - if the remaining term is less
32 than one year, the Governor, within sixty (60) days of the determination,
33 with the advice and consent of the Senate, shall appoint a new Attorney
34 General or Inspector General to fill the remaining term. If the remaining
35 term is more than one year, it shall be filled by a special election to be
36 held within sixty (60) days of the declaration of the disability.

37 (d) In the event of a permanent disability of any of elected official not yet
38 installed then the office shall be declared vacant and the vacancy shall be
39 filled by a special election to be held within sixty (60) days of the
40 declaration of the disability.

41 **Section 10** **Attorney General**

42 (a) There shall be an Attorney General, who shall be appointed by the
43 Governor with the advice and consent of the Senate, and at the time of
44 the appointment must:

- 1 (1) have resided in the Virgin Islands at least five (5) years next
2 preceding his election;
- 3 (2) be at least thirty five (35) years old;
- 4 (3) be licensed to practice law in the U.S. Virgin Islands; and
- 5 (4) have other qualifications as provided by law.
- 6 (b) The Attorney General shall prosecute all criminal violations of the laws
7 of the Virgin Islands; prosecute and defend all other legal matters in the
8 name of the people of the Virgin Islands, provide legal advice to the
9 government, and have other duties and responsibilities as provided by
10 law.

11 **Section 11 Inspector General**

- 12 (a) There shall be an Inspector General, who shall be appointed by the
13 Governor with the advice and consent of the Senate, who shall serve a
14 term of six years and at the time of the appointment must:
- 15 (1) be an elector of the U.S. Virgin Islands;
- 16 (2) have resided in the Virgin Islands at least five (5) years preceding his
17 election;
- 18 (3) be at least thirty five (35) years old when elected; and
- 19 (4) have other qualifications as provided by law.
- 20 (b) The Inspector General shall have such duties as prescribed by law.
- 21 (c) The Inspector General shall report the findings of any audit or
22 investigation to the Governor, Senate and the public.

23 **ARTICLE VII THE JUDICIAL BRANCH**

24 **Section 1 Judicial Power**

25 The judicial power of the Virgin Islands shall be vested in the Supreme Court of the
26 Virgin Islands, and in such lower courts as may be created by law.

27 **Section 2 Supreme Court**

28 The Supreme Court shall be the highest court of the Virgin Islands. It shall consist of a
29 chief justice and no fewer than two associate justices. It shall have appellate jurisdiction
30 over all cases arising under this Constitution and laws of the Virgin Islands, and shall also
31 have original jurisdiction to issue all writs necessary to the proper exercise of its
32 jurisdiction, and such other appellate and original jurisdiction as may be provided by law.
33 Decisions of the Supreme Court on questions arising under this Constitution and the laws
34 of the Virgin Islands shall be final, except as Federal law may provide for review of such
35 decisions by courts of the United States.

36 **Section 3 Rulemaking Power**

37 The Supreme Court of the Virgin Islands shall adopt rules consistent with this
38 Constitution, the U.S. Constitution, federal laws, with respect to judicial matters in the
39 courts of the Virgin Islands, including temporary disability, civil and criminal procedure,
40 judicial ethics, and admission to, governance of and expulsion from the practice of law.
41 Lower courts shall adopt rules for those courts, to the extent consistent with this
42 Constitution, the U.S. Constitution and federal laws.

1 **Section 4** **Administration**

2 The Chief Justice of the Supreme Court of the Virgin Islands shall be responsible for the
3 administration of the Supreme Court of the Virgin Islands. The Presiding judge of the
4 Superior Court shall be responsible for the administration of the Superior Court of the
5 Virgin Islands

6 **Section 5** **Qualifications**

7 Justices of the Supreme Court and a Judges of a lower court shall:

- 8 (a) be a citizen of the United States and of the Virgin Islands;
- 9 (b) be domiciled in the Virgin Islands for not less than ten (10) years
10 immediately preceding his or her appointment;
- 11 (c) for appointment to the (1) Supreme Court of the Virgin Islands, have
12 practiced and been duly licensed to practice law, or have served as a
13 judge in the Virgin Islands, for not less than ten (10) years immediately
14 preceding his or her appointment; or (2) for appointment to any lower
15 court, have practiced and been duly licensed to practice law, or have
16 served as a magistrate, for not less than five (5) years immediately
17 preceding his or her appointment.

18 **Section 6** **Judicial Commission**

19
20 There shall be a Judicial Commission whose terms shall be as provided by law. All
21 justices and judges shall be appointed by the Governor with the advice and consent of the
22 Senate, but no person shall be appointed as a justice or judge who has not been
23 nominated by the Judicial Commission.

- 24 (a) The Judicial Commission shall:
 - 25 (1) Nominate Justices and Judges: Within sixty (60) days of any judicial
26 vacancy, the Commission shall present to the Governor, for each
27 vacancy, a list of three persons qualified to fill the vacancy. No person
28 may be listed to fill more than one open vacancy.
 - 29 (2) Remove, Censure or Discipline Justices and Judges: The Commission
30 shall have the power to discipline, censure, suspend, remove or retire for
31 disability any justice or judge of any court for misconduct, malfeasance,
32 misfeasance, a crime of moral turpitude, disability or for a violation of a
33 criminal law. Any decision made pursuant to this subsection by the
34 judicial commission shall be appealable in a manner as provided by law.
- 35 (b) Composition: The Commission shall have nine members and composed
36 as follows:
 - 37 (1) Two members appointed by the Governor of the Virgin Islands, one
38 of whom shall not be a lawyer;
 - 39 (2) Two members appointed by the Senate, only one of whom shall be a
40 lawyer;
 - 41 (3) One member appointed by the Board of Governors of the Virgin
42 Islands Bar Association, who shall have been engaged in the practice of
43 law in the Virgin Islands for at least five (5) successive years preceding
44 his or her appointment;

- 1 (4) Two members appointed by the Supreme Court of the Virgin Islands,
2 who shall be current or former judges or justices in a court of record in
3 the Virgin Islands; and
- 4 (5) Two members appointed by the Superior Court of the Virgin Islands
5 and who shall be current or former judges or justices in a court of record
6 in the Virgin Islands.
- 7 (c) The Commission shall choose annually, from among its members a
8 Chairperson and such other officers as it may deem necessary and may
9 adopt such rules of procedure consistent with this Article as may be
10 necessary to govern the business of the committee;
- 11 (d) Vacancies on the Commission shall be filled for the remaining unexpired
12 term, in the same manner in which the original appointment was made.
- 13 (e) Members of the Commission shall not be compensated for their service
14 on the Commission.
- 15 (f) The Chairperson and any other officers of the Judicial Commission shall
16 be chosen annually, from among its members.
- 17 (g) Meetings of the Commission may be called by the Chairperson or by a
18 majority of the members after a ten (10) day written notice to
19 Commission members. The Commission meetings may be closed to the
20 public.

21 **Section 7 Judicial Appointments**

22 The Governor shall fill a vacancy in the judiciary by appointing one of the three persons
23 nominated by the Judicial Commission.

24 **Section 8 Terms**

25 The regular term of a justice of the Supreme Court shall be twelve (12) years. The regular
26 term of a judge of the Superior Court shall be ten (10) years. The regular term of any
27 other judge shall be set in the enabling law.

28 **Section 9 Compensation**

29 The salary and allowances of a justice or judge shall be recommended by the
30 Compensation Commission and may not be decreased during his or her tenure.

31 **Section 10 Restrictions on Activities**

32 No person who holds a judicial or magistrate office shall be employed, hold any other
33 paid office, engage in a trade or in the practice of law. Any justice, judge or magistrate
34 who files or announces his or her candidacy for elective office shall immediately forfeit and
35 vacate the judicial office.

36 **ARTICLE VIII LOCAL GOVERNMENT**

37 **Section 1 Political Subdivisions; Creation, Powers**

38 The Senate shall create three political subdivisions embodying St. John, St. Croix and St.
39 Thomas, and provide for the framework for the government thereof. The Senate shall not
40 create a political subdivision within any of the islands, except with the approval of the
41 majority of the electors voting on the question on the island, which is to be subdivided.
42 Each political subdivision shall have and exercise such powers as shall be conferred by
43 law.

1 **Section 2** **Local Government**

2 Each political subdivision shall have the power to adopt its own framework for local
3 government within such limits and under such procedures as may be provided by law.
4 The framework for local government shall be created by a commission composed of
5 members elected from said subdivision established by law. The Senate shall provide for
6 the election of commissions within one year of ratification of this Constitution.

7 **Section 3** **Mandates, Accrued Claims**

8 No law shall be passed mandating any political subdivision to pay any claim accrued
9 prior to the establishment of the local government.

10 **Section 4** **General Laws**

11 The legislative power of the Senate shall always be superior to any legislative authority
12 that may be granted to any local government.

13 **ARTICLE IX EDUCATION**

14 **Educational Philosophy**

15 It is the goal of the Virgin Islands to provide its citizens with a free, high-quality, public
16 education system that does not discriminate against any citizen, preserves the African
17 history, culture and traditions of the people of the Virgin Islands, and prepares its citizens
18 to compete globally.
19
20
21

22 **Section 1** **Public Education System**

- 23
- 24 (a) The government shall provide for a free, high-quality, public education
25 system that includes early childhood, elementary, middle, secondary,
26 career and technical higher education.
 - 27
 - 28 (b) The early childhood, elementary, middle education and secondary
29 education shall be compulsory and shall begin at the earliest age when a
30 child has the mental and physical capacity for classroom learning.
 - 31
 - 32 (c) The system shall maintain state of the art technology and up-to-date
33 textbooks in the classrooms.
 - 34
 - 35 (d) The system shall maintain the smallest class size possible to ensure that
36 each student receives a high-quality education, but in any case, the class
37 size shall not have more than 20.
 - 38

39 **Section 2** **Funding**

- 40
- 41 (a) The Virgin Islands Senate shall provide the funding necessary to obtain
42 and maintain a free, high-quality, public education system.
 - 43
 - 44 (b) The Virgin Islands Senate shall establish and maintain the Virgin Islands
45 Fund for Education.
 - 46
 - 47 (c) The fund shall be supported by appropriations and allotments from the
48 General Fund which shall include at least fifty percent (50%) of all
49 earnings derived from legal and illegal games of chance in the territory.

- 1 (5) Ensure that classroom size shall, to the greatest extent possible, be no
2 greater than the median size ratios of public school systems of high
3 quality by the year 2012;
4
5 (6) Ensure that African and Caribbean history, the culture and history of
6 the Virgin Islands and its original people are included in the curriculum
7 of study.
8
9 (7) Set the school calendar for all public schools in the territory;
10
11 (8) Act as the Virgin Islands Board of Technical and Career Education;
12
13 (9) Certify all educational professionals and schools, public and non-
14 public, in the territory to ensure that a high-quality education is provided;
15
16 (10) Have oversight of the Territorial Scholarship Program;
17
18 (11) Shall present an annual report to the Virgin Islands Senate on the
19 state of the Education System of the Virgin Islands by August 1st of each
20 year;
21
22 (12) Require the compulsory teaching of African and Caribbean history,
23 culture and vocational education in schools from elementary to twelfth
24 grade.
25
26 (13) Any other such powers or duties established by law.
27

28 **Section 4**

District Boards of Education

- 29
30 (a) Boards of Education for each of the districts of the Virgin Islands shall
31 be established by law and shall operate under the following terms:
32
33 (1) Districts. There shall be two District Boards: one for the island of
34 St. Croix, and one for the islands of St. Thomas/St. John.
35
36 (2) Members. Each of the District Boards shall have seven (7) members
37 elected by the citizens of each of the electoral districts of the Virgin
38 Islands.
39
40 (3) St. Thomas/St. John District. The St. Thomas/St. John District must
41 have at least one (1) member who is a resident of St. John.
42
43 (4) Chairman and Vice Chairman. The members of each District Board
44 shall elect a Chairman and a Vice-Chairman from among the
45 members of that District at the first meeting after each election.
46
47 (5) Vacancy. When a vacancy occurs on the District Board, the
48 Chairman of the District Board shall name a replacement from the
49 next person in line with the highest number of votes in the district,
50 within thirty (30) days of the vacancy. The person named shall serve
51 for the remainder of the term.

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- (b) The District Boards of Education shall have the following powers and duties:
 - (1) Each District shall hire a Director of Budget and Management, a Director of Maintenance, and a Director of Nutrition and Food Service.
 - (2) Any other such powers or duties established by law.

Section 5 Commission on Civics

- (a) A Commission on Civics for the Virgin Islands shall be established by law.
- (b) The Commission shall have the following powers and duties:
 - (1) Develop and coordinate programs in collaboration with schools to educate students in the importance of governance and democracy and citizen involvement in a representative democracy;
 - (2) Any other such powers or duties established by law.
- (c) The Commission shall remain effective for a period of five (5) years after establishment.
- (d) The members of the commission shall elect a chairman, vice chairman, and such other officers as it shall determine;
- (e) A member of the commission shall serve without compensation for his services, but may receive a per diem and be reimbursed for reasonable and necessary travel and other expenses actually incurred on business of the commission;
- (f) The commission shall hold meetings at least every quarter upon the call of the chairman or the majority of the members. The initial meeting of the commission shall be called by the president of the Virgin Islands Senate;
- (g) Staff and facilities needed by the commission to accomplish its purposes shall be provided by the Virgin Islands Senate from its existing resources.

ARTICLE X YOUTH

Section 1 Minimum Age of Employment

The Senate shall establish laws and regulations to govern the employment of children in the Virgin Islands including a minimum age required for employment.

Section 2 Free Tuition For Higher Education

Graduates with four (4) years residency, from a Virgin Islands secondary public school may be eligible for free tuition for higher education if the student:

- 1 (a) Applies within a number of years of graduation from secondary
2 school specified by law, is admitted and attends a Virgin Islands public
3 institution of higher education;
4
5 (b) Pursues an associate or bachelor degree in a degree field that has
6 been determined to be of need by the Virgin Islands Department of
7 Personnel;
8
9 (c) Becomes an employee of the government in the area of need for
10 double the years of study following the graduation from the institution of
11 higher education as established by law; or the tuition shall be owed, and
12 repayment shall commence six (6) months after graduation and paid in
13 full after four (4) years;
14
15 (d) A Graduate who does not complete a degree shall begin repayment of
16 the tuition six (6) months after terminating pursuit of the degree; and
17
18 (e) Any other such requirements established by law.
19

20 **ARTICLE XI TAXATION, FINANCE AND COMMERCE**

21 **Section 1 Power to Tax**

22 The Senate shall have the exclusive power to tax and may apportion revenues among the
23 political subdivisions.

24 **Section 2 Tax Review Commission**

25 There shall be a tax review commission, which shall be appointed as provided by law on
26 or before July 1, 2011, and every five (5) years thereafter. The Commission shall submit
27 to the Senate (a) an evaluation of the tax structure and (b) recommend policy for revenue
28 and taxes. The Commission shall dissolve upon the delivery of the report. The Senate
29 shall not make changes to the tax code until it has received the evaluation of the
30 Commission.

31 **Section 3 Taxpayers' Bill of Rights**

32 By law the Senate shall prescribe and adopt a Taxpayers' Bill of Rights in clear and
33 concise language that defines taxpayers' rights and fair treatment of taxpayers.
34
35

36 **Section 4 Local Government Taxation and Finance**

37 The power to tax shall be reserved to the Senate. A political subdivision may petition the
38 Senate to impose a tax for the benefit of the local government.

39 **Section 5 Real Property Tax**

40 The Senate by law may provide for the levy and collection of taxes on real property in
41 accord with the following:

- 42 (a) The value of real property shall be assessed at the time of purchase and
43 remain fixed for the period of ownership;
44 (b) Real property transferred to a descendant shall not be reassessed;

- 1 (c) Improvements shall be assessed when built and added to the original
2 assessment without otherwise affecting the original assessment;
- 3 (d) Real property tax shall be levied on the basis of fair market value as
4 specified by law;
- 5 (e) Real property shall be divided into one or more classes, with all real
6 property in the same class subject to the same millage rate;
- 7 (f) Real property millage rates shall be set by the tax review commission and
8 approved by the Senate; and
- 9 (g) No Real Property tax shall be assessed on the primary residence or
10 undeveloped land of an Ancestral Native Virgin Islander.

11 **Section 6 Tax Ceiling**

12 It is hereby established that the total amount of taxes which may be imposed by the
13 Senate in any fiscal year on the taxpayers shall be limited as recommended by the tax
14 review commission and approved by the Senate.

15 **Section 7 Disposition of Excess Revenues**

16 The Government shall provide a refund to taxpayers when the general fund fiscal year
17 balance for two successive years exceeds five percent (5%) of the general fund revenues.

18 **Section 8 General Fund Expenditure Ceiling**

19 Notwithstanding any other provision to the contrary, the Senate shall establish a general
20 fund expenditure ceiling which shall limit the rate of growth of general fund
21 appropriations, excluding federal funds received by the general fund, to the estimated rate
22 of growth of the territory's economy as provided by law. No appropriations in excess of
23 such ceiling shall be authorized during any legislative session unless the Senate shall, by
24 a two-thirds (2/3) vote of the members, set forth the dollar amount and the rate by which
25 the ceiling will be exceeded and the reasons therefor.

26 **Section 9 Public Debt Limitation**

27 The Senate shall provide the method, restrictions and the authorization for the issuance
28 of public debt through bonds or other obligations to be issued on behalf of the
29 Government either for (a) a public improvement or public undertaking or (b) other
30 purposes in the public interest for economic development. Such bonds or obligations
31 shall be payable solely from revenues directly derived from and attributable to such
32 public improvement, public undertaking, or other project. The Senate may obligate bonds
33 as a general obligation of the Government.

34 **Section 10 Accounting for Public Moneys**

35 The Senate shall provide by law for the annual accounting of all public moneys, and may
36 provide by law for interim accounting. The Department of Finance shall issue this report
37 (within one year) after the close of each fiscal year. The report shall be compliant with
38 the requirements of law.

39

40 **Section 11 Limitation on Corporate Tax Incentives**

41 Notwithstanding any other provision to the contrary, the Senate shall impose a cap on any
42 tax incentives or other economic benefit provided to a corporation or other business
43 entity as follows:

1 (a) No business shall enjoy a tax exemption or any other economic incentive for
2 more than twenty-five (25) years; and

3 (b) No such benefit shall be renewable despite any change in corporate status to
4 include but not be limited to a name change, merger or change in ownership.

5 **ARTICLE XII ECONOMIC DEVELOPMENT**

6 **Section 1 Economic Development Opportunities**

7 The Government shall provide for the economic development of the Virgin Islands that
8 promotes economic opportunity through technology, use of natural resources and other
9 methods for the benefit of all citizens, especially for unemployed and disadvantaged
10 persons; and encourage growth in areas experiencing insufficient economic growth. The
11 Government shall set forth by law a plan to (a) reduce the Virgin Islands dependence on
12 imports, (b) increase the development of local business and industries, and (c) create
13 economic opportunities. The Government shall establish laws to govern the employment
14 of children under the age of fifteen.

15 **Section 2 Preservation of Natural Resources**

16 The Government shall have the power to manage, control and develop the natural and
17 marine resources comprising of submerged lands, inlets and cays; to reserve to itself all
18 such rights to internal waters between the individual islands, claim sovereignty over its
19 inter-island waters to the effect that territorial waters shall extend 12 nautical miles from
20 each island coast up to international boundaries. This is an alienable right of the people of
21 the Virgin Islands of the U.S. and shall be safeguarded.

22 **Section 3 Energy Efficiency**

23 The Government shall enable legislation to stimulate, encourage, promote and assist in
24 the development of renewable and alternative energy resources, and the efficient use of
25 energy.

26 **Section 4 Use of Technology**

27 The Government shall provide "state of the art" technology for use in government,
28 economic development, education, health and welfare of the people of the Virgin Islands.

29 **Article XIII PUBLIC HEALTH, SAFETY AND WELFARE**

30 **Section 1 Health, Safety and Welfare of Citizens**

31 The Government shall provide for the health, safety and welfare of the Virgin Islands and
32 its residents and provide for:

33 (a) The victims of crimes to have the opportunity to be heard, in a fair and
34 dignified manner, during the prosecution of the crime in which they were
35 a victim, as provided by law;

36 (b) The protection of the residents, properties and ports within its borders;

37 (c) A health system that provides its residents with healthcare and a clean
38 environment;

39 (d) The protection and welfare of its children, elderly, unemployed and
40 disabled without regard to of race, color, sex, gender, sexual orientation,
41 place of birth, socio-economic class, origin, political religious belief, age
42 or disability; and

- 1 (e) The mitigation of any disasters and provision of assistance to the victims
2 of disasters.

3 **ARTICLE XIV CULTURE**

4 **Section 1 Cultural Development**

5 The Government shall provide for the protection, promotion and preservation of the
6 culture, music, traditions, customs and intellectual property of the Virgin Islands. The
7 Government may enact development legislative measures designed to protect or assist
8 cultural tradition bearers, or persons disadvantaged by discrimination.

9 **Section 2 Virgin Islands Cultural Heritage Institute**

- 10 (a) The Virgin Island Cultural Heritage Institute shall be charged with the
11 protection, preservation and study of African and Caribbean history,
12 culture, arts, and traditions; and all other people of the Virgin Islands
13 who have contributed to the history of the Virgin Islands. The Institute
14 shall:

15 (1) make recommendation to the Senate on the manner by which the
16 Government shall preserve and protect the history, culture, arts,
17 traditions, artifacts and intellectual property of the Virgin Islands;

18 (2) have voice in the consideration of land use elements and
19 development of land that may substantially affect any history, culture,
20 artifact or other traditions of the people of the Virgin Islands; and

21 (3) in conjunction with the Board of Education recommend a curriculum
22 for the study of African and Caribbean history, culture, arts and
23 traditions; and all other people of the Virgin Islands who have
24 contributed significantly to the history of the Virgin Islands.

- 25 (b) No law shall be passed that abridges the preservation and development of
26 the Virgin Islands' culture, language, history, traditions or customs.

- 27 (c) The government may take action to protect citizens who are the cultural
28 tradition bearers of the Virgin Islands from discrimination and adverse
29 action that affects the culture and traditions of the Virgin Islands.

30 **ARTICLE XV PROTECTION OF ENVIRONMENT**

31 **Section 1 Agriculture/Mariculture Authority**

32 The Government shall establish an Agriculture/Mariculture Authority for the following
33 purposes: (a) for acquiring lands for agricultural purposes, (b) for the development of the
34 marine science industry, (c) for scientific research and development and production, (d)
35 for redistribution by lease to the people of the Virgin Islands for agricultural or
36 homestead purposes, and (e) for other related public purposes as provided by law.

37 **Section 2 Environmental Protection**

38 There shall be established the Land, Air and Water Preservation Commission, that shall
39 develop a comprehensive plan for the preservation and enjoyment of land, air, water,
40 spiritual and medicinal plants, animals and other natural resources. The Commission shall
41 further provide for the enjoyment of the Virgin Islands' natural beauty, cultural,
42 economic viability of the natural resources and the quality of life of the people of the
43 Virgin Islands.

44

1 least thirty percent (30%) of the number of votes cast for that office. The petition shall
2 state the reasons for recall and be filled or concluded within sixty (60) days of its
3 initiation.

4
5 (b) A special recall election shall be held within sixty (60) days of the filing of the recall
6 petition. An official shall be recalled upon the affirmative vote of two-thirds (2/3) of
7 those voting on the question.

8
9 (c) A recall petition may not be filed during the first year of the first term of office of
10 an elected official, less than three (3) months before a general election, nor more than
11 once a year except for cause.

12
13 **ARTICLE XVII POLITICAL STATUS ADVISORY COMMISSION**

14
15 **Section 1 Creation of the Political Status Advisory Commission**

16
17 (a) Within two years of the adoption of the Constitution, there shall be created a
18 Political Status Advisory Commission for the Virgin Islands.

19
20 (b) The Political Status Advisory Commission shall consist of eleven (11) members
21 who are Ancestral Native and/or Native Virgin Islanders, two appointed by the
22 Governor and two appointed by the President of the Senate. The remaining
23 members shall be elected At-Large; provided that three shall be elected from
24 St. Croix, three from St. Thomas, and one from St. John. The members must
25 registered voters, shall be a domiciliary of the Virgin Islands for a minimum of
26 five years, and have demonstrated expertise in political status development of
27 United States and other territories. The term of office shall be three years. The
28 resources and remuneration shall be prescribed by law.

29
30 **Section 2 Special Election**

31
32 (a) The Senate shall provide for a special election to be held after a year of
33 Public Education on the status and federal relations options of: (1) statehood,
34 (2) free association, and (3) Independence.

35
36 (b) The special election on status shall be reserved for vote by Ancestral Native and
37 Native Virgin Islanders only, whether residing within or outside the territory.

38
39 **Section 3 Duties of the Political Status Advisory Commission**

40 The Political Status Advisory Commission shall have the following duties:

41 (a) Summarize the reports of the first Virgin Islands Status Commission,
42 the Select Committee of the Senate on Status and Federal Relations,
43 and the Commission on Status and Federal Relations;

44
45 (b) Publish analyses, discussion papers, information papers and other
46 relevant reports on matters related to the political and constitutional
47 evolution of the Virgin Islands;

48
49 (c) Promote through an ongoing public education program a heightened
50 understanding and awareness of the relevant political status options

1 available to the territory;

2
3 (d) Make recommendations to the Governor and Senate on methods
4 to achieve a full measure of self-government; and

5
6 (e) Exercise such other functions as may be prescribed by law.

7 **ARTICLE XVIII CONSTITUTIONAL AMENDMENT**

8 **Section 1 Proposal of Amendments**

9 Amendments to this Constitution shall maintain the principles of a republican form of
10 government and may be proposed by initiative, a constitutional convention, or the Senate.

11 **Section 2 General Constitutional Convention**

12 (a) The Senate, by the affirmative vote of two-thirds of its members, may submit to the
13 electors of the Virgin Islands at a regular general election the question, "Shall there be a
14 constitutional convention to propose amendments to the Constitution?" This question
15 shall be submitted by the Senate to the electors of the Virgin Islands within ten years after
16 the effective date of this Constitution and at least once every ten years thereafter.

17 (b) An initiative petition may submit to the electors of the Virgin Islands the question,
18 "Shall there be a constitutional convention to propose amendments to the Constitution?"
19 The petition shall be signed by at least fifteen percent (15%) of the electors of each
20 legislative district of the Virgin Islands or by twenty-five percent (25%) of the qualified
21 electors of the Virgin Islands. The question shall be submitted to the electors at the first
22 regular election held not less than ninety (90) days after filing of the initiative petition.

23 (c) If a majority of those voting on the question of a constitutional convention favors
24 holding such a convention, the Senate shall convene a convention within one hundred and
25 twenty (120) days after approval of the petition.

26 (d) Delegates to a constitutional convention shall be elected on a nonpartisan ballot as
27 provided by law. A constitutional convention may propose an amendment to the
28 Constitution only upon the affirmative vote of two-thirds (2/3) of its members.

29 **Section 3 Legislative Proposal**

30 The Senate may propose an amendment to this Constitution upon the affirmative vote of
31 two-thirds (2/3) of its members.

32 **Section 4 Initiative**

33 The people may propose an amendment to this Constitution by initiative. An initiative
34 petition shall contain the full text of the proposed amendment and shall be signed by
35 fifteen percent (15%) of the electors of each legislative district of the Virgin Islands or by
36 twenty-five percent (25%) of the electors of the Virgin Islands.

37 **Section 5 Limited Constitutional Conventions**

38 A constitutional amendment proposed by the Senate or by initiative may provide, in
39 accordance with its terms, for direct ratification by the electors of the Virgin Islands or
40 for the convening of a constitutional convention limited to the issues raised by the
41 proposed amendment. If a majority of those voting on the question of a limited
42 constitutional convention favors holding such convention, the Senate shall convene a
43 limited constitutional convention within one hundred and twenty (120) days, subject to
44 the same restrictions on membership and adoption of any proposed amendment as those
45 imposed on a general constitutional convention.

1 **Section 6 Constitutional Review Commission**

2 Within five (5) years after the effective date of this Constitution and at least once every
3 ten (10) years thereafter, a constitutional review commission shall be established by law.
4 The commission shall, within one hundred and twenty (120) days of its establishment,
5 make a public report to the Senate with its proposals, if any, for revision of the
6 Constitution. Members of the commission shall be qualified electors of the Virgin
7 Islands.

8 **Section 7 Ratification of Amendments**

9 Each proposed amendment to this Constitution shall be submitted to the electors of the
10 Virgin Islands for ratification at the first regular general election or at a special election
11 called by the Senate. Ancestral and Native Virgin Islanders, including those who reside
12 outside of the Virgin Islands or in the military, shall have the opportunity to vote on
13 Constitutional Amendments. A proposed amendment shall take effect in accordance with
14 its terms upon the affirmative vote of a majority of those voting on the amendment.

15 **ARTICLE XIX TRANSITION**

16 **Section 1 Transitional Schedule Ratification and Effective Date of the**
17 **Constitution**

18 This Constitution, as finally approved or modified by the Congress of the United States
19 under Section 5 of Public Law 94-584 (October 12, 1976), shall be submitted to the
20 electors of the Virgin Islands and shall be ratified upon the affirmative vote of a majority
21 of those voting on the question. The Constitution shall take effect one hundred and
22 twenty days (120) after ratification, except as provided in Sections 2 and 5 of this
23 Transitional Schedule.
24
25

26 **Section 2 Elections**

27 Except as otherwise specifically set forth within any other provision of this Constitution,
28 all elected officials shall be elected in accordance with this Constitution at the first
29 general election after the effective date of this Constitution.

30 **Section 3 Continuity of Laws**

31 Laws, executive orders, and regulations in force in the Virgin Islands on the effective
32 date of this Constitution that are consistent with this Constitution shall continue in force
33 until they expire, are amended, or repealed. Laws, executive orders, and regulations that
34 have been enacted or issued by the Senate of the Virgin Islands or by local executive
35 authorities, respectively that are inconsistent with this Constitution shall be void to the
36 extent of such inconsistency.

37 **Section 4 Continuity of Government Employment and Operations**

38 Employees of the Government of the Virgin Islands on the effective date of this
39 Constitution shall be employees of the constitutional government on the same terms and
40 conditions of employment as were in effect and enforceable previously, unless otherwise
41 provided by law. Employees of the Government of the Virgin Islands shall have the
42 same functions and duties after becoming employees of the constitutional government
43 unless otherwise provided by law.

44 **Section 5 Continuity of Judicial Matters**

45 The Supreme Court of the Virgin Islands and the Superior Court of the Virgin Islands
46 shall continue as the appellate court and the trial court of jurisdiction, respectively, in the

1 same manner as existed prior to the date of adoption of this Constitution until and unless
2 changed by law. The qualifications for justices and judges set forth in this Constitution
3 shall not be retroactively applied to any sitting justice or judge of the Supreme or
4 Superior Courts. All rules of the judicial system consistent with this Constitution and in
5 effect upon the adoption of this Constitution shall continue or may be modified or
6 terminated in the same manner as existed prior to the adoption of this Constitution until
7 and unless changed by law or by rule.

8 **Section 6 Prospective Operation of Rights**


9 All rights or obligations, procedural or substantive, created for the first time by this
10 Constitution shall be prospective and not retroactive.

11 **Section 7 Succession**

12 The constitutional government of the Virgin Islands shall succeed to all rights and
13 obligations of the Government of the Virgin Islands that existed prior to the effective date
14 of this Constitution. The validity of all public and private bonds, debts, and contracts,
15 and of all claims, actions, and causes of action shall continue as if no change had taken
16 place.

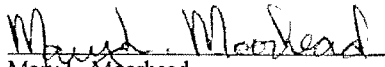
17 Signed and Witnessed as the approved and adopted by the Delegates to the Fifth
18 Constitutional Convention of the Virgin Islands on this 15 day of
19 June, 2009.

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Gerald Lutz James II
President

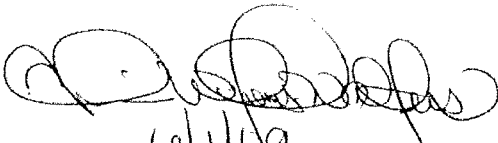
Date: 15 JUN 09

Attested By:


Mary L. Moorhead,
Secretary

Date: June 15, 2009

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6/1/09

CHERENE WILLIAMS
COMMISSION NUMBER: NP-119-07
EXP. DATE: 5/3/2011