

**THE PROPOSED VIRGIN ISLANDS
CONSTITUTION FROM THE FIFTH
CONSTITUTIONAL CONVENTION**

OVERSIGHT HEARING

BEFORE THE

SUBCOMMITTEE ON INSULAR AFFAIRS,
OCEANS AND WILDLIFE

OF THE

COMMITTEE ON NATURAL RESOURCES
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED ELEVENTH CONGRESS

SECOND SESSION

—
Wednesday, March 17, 2010
—

Serial No. 111-49

—
Printed for the use of the Committee on Natural Resources



Available via the World Wide Web: <http://www.gpoaccess.gov/congress/index.html>

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Committee address: <http://resourcescommittee.house.gov>

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U.S. GOVERNMENT PRINTING OFFICE

55-534 PDF

WASHINGTON : 2010

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**OVERSIGHT HEARING ON “THE PROPOSED
VIRGIN ISLANDS CONSTITUTION FROM THE
FIFTH CONSTITUTIONAL CONVENTION.”**

**Wednesday, March 17, 2010
U.S. House of Representatives
Subcommittee on Insular Affairs, Oceans and Wildlife
Committee on Natural Resources
Washington, D.C.**

The Subcommittee met, pursuant to call, at 2:10 p.m. in Room 1324, Longworth House Office Building, Hon. Madeleine Bordallo presiding.

Present: Representatives Bordallo, Sablan, Christensen, Pierluisi, Young, and Flake.

Ms. BORDALLO. Good afternoon, everyone. For those who are standing in the back, we do have chairs on the lower dais here. You are more than welcome to be seated. The hearing by the Subcommittee on Insular Affairs, Oceans, and Wildlife will come to order. The Subcommittee is meeting today to receive testimony on the proposed constitution of the United States Virgin Islands submitted by the Fifth Virgin Islands Constitutional Convention.

While Committee Rule 4(g) limits opening statements to the Chair and the Ranking Minority Member, in a few minutes, I intend to also recognize my good friend, the gentlewoman from the Virgin Islands, Dr. Christensen, to make a few opening remarks and to introduce her constituents who are here with us today. If any other Members have statements, they can be included in the hearing record under unanimous consent. I now will recognize myself for an opening statement.

**STATEMENT OF HON. MADELEINE Z. BORDALLO, A DELEGATE
IN CONGRESS FROM THE TERRITORY OF GUAM**

Ms. BORDALLO. The United States Virgin Islands and the congressional district I have the privilege to represent here in Congress, the Territory of Guam, are the only two United States jurisdictions that are not governed by a constitution written by their people. Both areas are, in fact, governed by an organic act that was written by Congress.

To more firmly enable both jurisdictions to write their own constitutions, Congress in 1976 enacted legislation, sponsored by the former Virgin Islands and Guam delegates, to authorize the people of the Virgin Islands and Guam to convene constitutional

conventions and write their own local constitutions. The law, which was U.S. Public Law 94-584, sets out a process for Federal review of any proposed constitution, including 60-day periods for both Presidential and congressional review, respectively.

The Virgin Islands has on four previous occasions written constitutions pursuant to local law and two in accordance with the U.S. Public Law 94-584. The first attempt was in 1964. It was not approved in its entirety by Congress, and the second in 1971 was never submitted to Congress because of the low level of voter support when it was submitted to the people of the territory for their approval.

The third draft constitution was submitted to Congress in 1978, but was rejected by the voters when it was returned to them without having been amended. A fourth proposed constitution was drafted in 1980. Congress approved that document via a joint resolution in 1981, but it too was rejected by the voters, which brings us to the current document before us today.

The law that authorized the writing of a constitution by the Virgin Islands and Guam empowers Congress with the ability to amend or clarify the said constitution should we see fit. Congress would also allow a proposed constitution to be returned to the residents of either territory for approval by the voters without changing the document in any way, as was done by the 96th Congress with a third proposed Virgin Islands constitution.

In submitting the fifth proposed constitution to Congress, President Obama included for our consideration a legal memorandum from the United States Department of Justice which outlines at least eight areas in the proposed constitution that the Department believes should either be removed from the constitution or modified. We understand the witness for the Department of Justice today will elaborate on this further.

The principal question confronting this committee and Congress is whether or not we will be able to modify or amend the draft constitution to conform to the recommendations of the Justice Department. In examining this question, we are mindful that the law authorizing this process for the drafting and the adoption of such constitution requires Congress to act within 60 days.

Regrettably, this window of time does not reflect the current realities as to the pace at which legislation of this nature would typically advance through the Congress, particularly with respect to recent experiences associated with bills pending in the other body, the U.S. Senate.

Another consideration we are called to take into account is the amount that any congressional modification would have on the views of the voters in the Virgin Islands, whose constitution this is, and who will ultimately be called upon to approve or disapprove of it via referendum. In considering these circumstances, I am mindful of the words shared by the former Chairman of the Senate Energy and Natural Resources Committee, The Honorable J. Bennett Johnston of Louisiana, who when speaking at the hearing to approve the fourth proposed Virgin Islands constitution, said rather simply and straightforwardly, and I quote, "This constitution should be the product of the people of the Virgin Islands, and I believe that we should defer to them,"

His words are as relevant today with respect to the fifth constitution before us as they were with respect to the fourth constitution before Congress in 1981. Both documents have risen under the same process, so we must therefore take care not to substitute our judgment for those of the people who were elected to draft the constitution on behalf of the people who elected them, less the principle of self-government be trampled upon.

As we hear from our witnesses today, including from a number of whom helped draft the constitution, it is my hope that a consensus will emerge on the best way forward, given the time constraints we are under and the limitations in getting legislation here in Congress duly acted upon without delay by the other body.

I know that the people of the Virgin Islands want to have their own constitution, as evidenced by the decades worth of attempts that they have made to secure one. While this constitution may not be a perfect document, and this committee will go on record acknowledging its legal imperfections, it nonetheless is a product of a significant amount of hard work and, as such, deserves our most serious and careful attention, as well as that of the people of the Virgin Islands, who will ultimately be called upon to approve or disapprove it, irrespective of whether Congress takes any action on it or not.

And finally, I want to thank the Governor and the other leaders who have submitted testimonies for our consideration. I also want to extend my sincerest welcome to those who have traveled from the Virgin Islands to be with us today. And I also acknowledge the steadfast leadership provided by your Member of Congress, our good friend, the distinguished gentlewoman, Dr. Donna Christensen. She is an ardent guardian of self-government and seeks at every opportunity to protect and advance the fundamental political rights of the people of the territories.

This committee continues to value her leadership on these issues, and I know we will deliberate on this particular matter with appropriate deference to her insight. And so with that, we look forward to the testimonies.

[The prepared statement of Chairwoman Bordallo follows:]

**Statement of The Honorable Madeleine Z. Bordallo, Chairwoman,
Subcommittee on Insular Affairs, Oceans and Wildlife**

The Subcommittee is meeting today to hear testimony on the proposed constitution of the United States Virgin Islands submitted by the 5th Virgin Islands Constitutional Commission.

The United States Virgin Islands, like the Congressional District I have the privilege to represent here in Congress—Guam—are the only two U.S. jurisdictions that are not governed by a Constitution written by the people. Both areas are governed by an Organic Act that was written by Congress.

To more firmly enable both jurisdictions to write their own Constitutions, Congress, in 1976, enacted legislation sponsored by former Virgin Islands Delegate, Congressman Ron de Lugo, and one of my predecessors, the late Congressman Antonio B. Won Pat, to authorize the people of the Virgin Islands and Guam to convene constitutional conventions and write their own local constitutions. The law, U.S. Public Law 94-528, sets out a process for federal review of any proposed constitution, including 60 day periods for both Presidential and Congressional review, respectively.

The Virgin Islands has on four previous occasions, written constitutions, two pursuant to local law and two in accordance with U.S. Public Law 94-528. The first attempt, in 1964 was not approved in its entirety by Congress and the second in 1971 was never submitted to Congress because of the low level of voter support when it

was submitted to the people of the territory for their approval. The third draft constitution was submitted to Congress in 1978 but was rejected by the voters when it was returned to them without having been amended. A fourth proposed constitution was drafted in 1980. Congress approved that document via a joint resolution in 1981 but it too was rejected by the voters: which brings us to the current document before us today.

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In submitting the fifth proposed constitution to Congress, President Obama included for our consideration a legal memorandum from the United States Department of Justice which outlines at least eight areas in the proposed constitution that the Department believes should either be removed from the constitution or modified. We suspect the witness for the Department of Justice will elaborate on this further.

The principal question confronting this Committee and Congress is whether or not we will be able to modify or amend the draft constitution to conform to the recommendations of the Justice Department. In examining this question we are mindful that the law authorizing this process for drafting and adoption of such Constitution requires Congress to act within 60 days. Regrettably, this window of time does not reflect the current realities as to the pace at which legislation of this nature would typically advance through Congress, particularly with respect to recent experiences associated with bills pending in the other body.

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His words are as relevant today with respect to the fifth constitution before us as they were with respect to the fourth constitution before Congress in 1981; both have risen under the same process. We must, therefore, take care not to substitute our judgment for those of the people who were elected to draft the constitution on behalf of the people who elected them, lest the principle of self-government be trampled upon.

As we hear from our witnesses today, including a number of whom helped draft the constitution, it is my hope that a consensus will emerge as to the best way forward given the time constraints we are under and the limitations in getting legislation duly acted upon without delay by the other body.

I know that the people of the Virgin Islands want to have their own constitution as evidenced by the decades worth of attempts they have made to secure one. While this constitution may not be a perfect document, and this committee will go on record acknowledging its legal imperfections, it nonetheless is a product of a significant amount of hard work and as such deserves our most serious, careful attention as well as that of the people of the Virgin Islands who will ultimately be called upon to approve or disapprove it irrespective of whether Congress takes any action on it or not.

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Ms. BORDALLO. I would like at this time now to recognize the Representative from the Virgin Islands, The Honorable Donna Christensen.

STATEMENT OF HON. DONNA CHRISTENSEN, A DELEGATE IN CONGRESS FROM THE TERRITORY OF THE VIRGIN ISLANDS

Mrs. CHRISTENSEN. Thank you, Madame Chair, and thank you for holding this hearing on the proposed constitution for the United States Virgin Islands. I just regret that we were unable to hold this hearing in the territory as first planned. It is my pleasure also to welcome the Governor of the U.S. Virgin Islands, The Honorable John P. deJongh, Jr., in his first appearance before our Subcommittee, as well as the Minority Leader of the 28th Legislature of the Virgin Islands, Senator Usie Richards, and the President of the Fifth Constitutional Convention, Gerard Luz James II, and all of the other delegates of the Fifth Constitution who are here today, and their staff, to discuss the draft document before Congress.

Welcome also to Deputy Assistant Attorney General Jonathan Cedarbaum, and all of the Virgin Islanders who have joined us here in the audience to witness the hearing, as well as those who are listening on the web, television, or radio in the Virgin Islands or elsewhere.

It has been almost 30 years since the people of the Virgin Islands last embarked upon the process of drafting a constitution to oversee the governance of our lives as a proud people of the United States Virgin Islands. As we are here to consider this proposed Fifth Constitution, many of the issues that were of concern 30 years ago are still of concern today.

In particular, some sores that have been festering for all of those years have been opened once again, and so I am not, and none of us should be, surprised that this opportunity became one to attempt to address historic injustices and inequities, valued ancestry, culture, and tradition, and some of the yet unresolved issues surrounding political status.

One may legitimately argue whether they properly belonged in this convention, where a constitution was being drafted for an incorporated territory. But when a people embark on an effort of self-determination at any level, some of these issues will arise. I acknowledge and appreciate that as elected delegates to the constitution, each has worked hard to reflect the wishes of the Virgin Islands electorate. And while there may be differences and disagreements, I feel their goal has always been to craft a document that reflects the collective views of the majority of the people of the Virgin Islands.

On the other hand, though, I am conflicted because I do fundamentally believe that we owe the people of the Virgin Islands a document that is constitutionally sound within the context of our current relationship with the United States of America, as dictated by the authorizing legislation. The Justice Department representative will give its review findings in this regard.

But I also respect the process by which all of the people of the Virgin Islands who are eligible had the opportunity to vote and elect 30 individuals who they vested with the responsibility of creating a document that would reflect their wishes, positions, hopes,

and aspirations. And as happens here, the vote of the majority determines the outcome.

The Subcommittee and I look forward to hearing your thoughts, reflections, and positions on the process and the provisions each of you deem important to the document. This Congress will give every consideration to what is presented to us here today and to the written testimony that will be submitted. It is my hope that this fifth attempt at drafting a constitution for the United States Virgin Islands, amended or not by us, or amended or not by a reconvened convention, that it will pass muster with the people of the Virgin Islands, and that we will have our own constitution at long last.

At the point at which we adopt this constitution, or not, it seems clear to me that we can and must then revisit the issue of status. This process has shown the benefits and limitations of being an incorporated territory. Surely it can be the impetus and the basis for us to move forward with that more complex discussion. I am grateful to our Chairwoman for her legislation, which seeks to provide funding to help us with that process.

Again, I want to welcome everyone who is here to testify on this issue of great importance to the people of the Virgin Islands. I look forward to your testimony. And, Madame Chair, at this time I would like to ask unanimous consent to enter statements from Caroline Brown and Gaylord Sprauve to be entered into the record.

Ms. BORDALLO. No objection, so ordered.

Mrs. CHRISTENSEN. Thank you.

[NOTE: The statements submitted for the record have been retained in the Committee's official files.]

Ms. BORDALLO. I thank the gentlelady from the Virgin Islands for her statement. And now I would like to recognize the acting Ranking Member from Alaska, the gentleman Mr. Young.

**STATEMENT OF HON. DON YOUNG, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF ALASKA**

Mr. YOUNG. Thank you, Madame Chairman, and thank you for having these hearings. I want to submit for the record my statement. I am here to listen to the witnesses and ask questions down the line. With that, Madame Chairman, I will yield back the balance of my time.

Ms. BORDALLO. No objection, so ordered to enter your statement.

[The prepared statement of Mr. Young follows:]

**Statement of The Honorable Don Young, a Representative in Congress
from the State of Alaska**

Madam Chairwoman, good afternoon. Today's hearing topic is the draft U.S. Virgin Islands constitution. This is the 5th draft constitution developed by a U.S. Virgin Islands Constitutional Convention and many of the witnesses here today were members of this Convention and can give us some insight into the development of the constitution.

The U.S. Constitution, specifically, the Territories Clause, gives Congress the authority to govern territories. However, this does not mean that this authority should remain in perpetuity. Congress should assist the territories in developing and achieving to the greatest extent possible, as adopted and agreed to by their populace, territorial self-governance.

Congress has passed an Organic Act and other laws for the U.S. Virgin Islands, which have started the process of greater self-governance in the territory. However, these laws have been drafted by Congress and can only be changed by Congress. A constitution, if adopted by the U.S. Virgin Islands electorate, would allow the

territory greater self-governance through its ability to amend its constitution based on territorial needs, without Congressional action.

However, there are concerns with the submitted draft constitution. There are questions as to whether the document sufficiently recognizes U.S. sovereignty and the supremacy of certain provisions of the Constitution, treaties, and laws of the United States. In addition, there are a number of sections in the constitution that raise equal protection concerns.

Congress, under Public Law 94-584, gave itself 60 legislative days to amend, modify or approve a constitution developed by U.S. Virgin Islands. If we do not act within this time frame, the constitution is deemed to be approved. I want to stress, that if Congress does not act, it should not be interpreted as an endorsement of any of the provisions that have raised constitutional concerns. If the U.S. Virgin Islands electorate votes to adopt the constitution, the concerns raised by the Justice Department will need to be resolved through federal legislation.

Thank you, Madam Chairwoman.

Ms. BORDALLO. And I would just like to introduce the gentleman from Puerto Rico, Mr. Pedro Pierluisi. There will be questions later, and also Mr. Kili Sablan from the CNMI. Both have joined us.

And now we begin with our first group of witnesses, Mr. Jonathan G. Cedarbaum, Deputy Assistant Attorney General, Office of Legal Counsel, United States Department of Justice. And the next witness is The Honorable John P. deJongh, Governor of the United States Virgin Islands. Welcome, Governor. And The Honorable Usie R. Richards, the Minority Leader of the 28th Legislature of the Virgin Islands. I welcome you as well. And The Honorable Gerard Luz James II, the President of the Fifth Constitutional Convention. And coincidentally, I would note that Mr. James and I served as Lieutenant Governors together in the 1990s. And welcome to you, Lieutenant Governor.

I want to thank you all and to remind you that there is a red timing light on the table, which will indicate when your time is concluded. And we would appreciate your cooperation in complying with the limits that have been set, as we have many witnesses to hear from today. But be assured that your full written statement will be submitted for the hearing record.

I would like to mention to the Governors and the elected officials of the Virgin Islands, if you go a few minutes over the five minutes, we will not mind that. I was once a Lieutenant Governor.

Mr. Cedarbaum, we will begin with your testimony. Thank you for your presence today on behalf of the Administration, and you now may begin.

STATEMENT OF JONATHAN G. CEDARBAUM, DEPUTY ASSISTANT ATTORNEY GENERAL, OFFICE OF LEGAL COUNSEL, U.S. DEPARTMENT OF JUSTICE

Mr. CEDARBAUM. Thank you, Chairwoman Bordallo, acting Ranking Member Young, and other members of the Subcommittee. My name is Jonathan Cedarbaum. I am a deputy assistant attorney general in the office of legal counsel at the Department of Justice. I am honored to appear before you this afternoon to discuss the proposed constitution for the U.S. Virgin Islands, which was recently drafted by a constitutional convention in the Virgin Islands.

As you know, and as the Chairwoman indicated, Public Law 94-584 establishes a process by which the people of the U.S. Virgin Islands can adopt a constitution for their own local self-government. In accord with that process, the Fifth Constitutional Conven-

tion of the U.S. Virgin Islands drafted a proposed constitution last year and submitted it to the Governor of the Virgin Islands. The Governor forwarded the proposed constitution to President Obama. President Obama then transmitted the proposed constitution to Congress with his comments.

As President Obama stated in his letter of transmittal, the electorate of the Virgin Islands and its governmental representatives are to be commended for their continuing commitment to increasing self-government and the rule of law. As the President also indicated in his letter of transmittal, in carrying out his responsibilities under Public Law 94-584, he asked the Department of Justice, in consultation with the Department of the Interior, to write its views about the proposed constitution.

The Department provided those views in the form of a memorandum from the Assistant Attorney General for Legislative Affairs to the Office of Management and Budget, and the President attached the copy of the Department's memorandum to his letter of transmittal.

As the President noted, and as the Chairwoman noted, the Department of Justice's memorandum analyzed several features of the proposed constitution, including, first, the absence of an express recognition of United States sovereignty and the supremacy of Federal law; second, provisions for a special election on the USVI's territorial status; third, provisions conferring legal advantages on certain groups defined by place and timing of birth, timing of residency, or ancestry; fourth, residence requirements for certain offices; fifth, provisions guaranteeing legislative representation of certain geographic areas; sixth, provisions addressing territorial waters and marine resources; seventh, imprecise language in certain provisions of the proposed constitution's bill of rights; eighth, the possible need to repeal certain Federal laws if the proposed USVI constitution were adopted; and ninth, the effect of congressional action or inaction on the proposed constitution.

I would be happy to address any of these issues with you this afternoon. I should emphasize that our review was restricted to legal issues in light of the requirements of Public Law 94-548. The Department's memorandum does not address any questions of policy. Because I trust you have had some opportunity to review the Department's memorandum in advance of today's hearing, I will not attempt to summarize it in this opening statement. I would just briefly highlight three issues to which the Department suggested that changes in the proposed constitution might be considered.

First, 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 Virgin Islands by the revised Organic Act. Because we find it difficult to discern a legitimate governmental purpose that would be rationally advanced by these provisions, we recommend that they be removed.

Second, the proposed constitution imposes substantial residence requirements on a number of USVI offices. In particular, it requires the Governor and Lieutenant Governor, judges and justices

of the USVI Supreme Court and lower court, and the attorney general, inspector general, and members of the Political Status Advisory Commission to have been USVI residents for periods ranging from 5 to 15 years. These requirements, particularly those requiring more than five years raise potential equal protection concerns. Thus we would suggest that consideration be given to shortening their duration.

Third, Article 12, Section 2 of the proposed constitution concerning preservation of natural resources, makes a number of assertions about USVI sovereignty or control over waters and submerged lands. The intended meaning and effect of this provision are not entirely clear, but 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 or modified.

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. Federal law also reserves to the United States exclusive management rights over fisheries within the exclusive economic zone. The proposed constitution must be made consistent with these Federal statutory mandates.

Finally, while the last sentence of Article 12, Section 2 acknowledges that the rights it addresses are alienable, we recommend modifying that language to make clearer that these matters are subject to Congress's plenary authority.

I would like to emphasize that my statement has focused on three aspects of the proposed constitution that we believe Congress should consider revising because we believe that discussing those provisions would be most helpful to the Subcommittee as it considers what actions to take in response to the transmittal of the proposed constitution.

Let me close by again echoing President Obama's letter of transmittal and commending the electorate of the Virgin Islands and its governmental representatives in their continuing commitment to increasing self-government and the rule of law. I would be happy to address any questions you may have, and I would be grateful if the Department's memorandum could be inserted in the record of this hearing immediately following this statement.

Ms. BORDALLO. No objection to that. So ordered.

[The prepared statement of Mr. Cedarbaum follows:]

**Statement of Jonathan G. Cedarbaum, Deputy Assistant Attorney General,
U.S. Department of Justice**

Chairwoman Bordallo, Ranking Member Brown, Members of the Subcommittee: My name is Jonathan Cedarbaum. I am a Deputy Assistant Attorney General in the Office of Legal Counsel at the Department of Justice. I am honored to appear before you this afternoon to discuss the proposed constitution for the U.S. Virgin Islands ("USVI") recently drafted by a constitutional convention in the Virgin Islands.

As you know, Public Law 94-584 establishes a process by which the people of the U.S. Virgin Islands can adopt a constitution for their local self-government. In accord with that process, the Fifth Constitutional Convention of the U.S. Virgin Islands drafted a proposed constitution last year and submitted it to the Governor of the Virgin Islands. The Governor forwarded the proposed constitution to President Obama. President Obama then transmitted the draft Constitution to the Congress with his comments. As the President indicated in his letter of transmittal, in

carrying out his responsibilities under Public Law 94-584 he asked the Department of Justice, in consultation with the Department of the Interior, to provide its views of the proposed constitution. The Department provided those views in the form of a memorandum from the Assistant Attorney General for Legislative Affairs to the Office of Management and Budget, and the President attached a copy of the Department's memorandum to his letter of transmittal.

As the President also noted, the Department of Justice's memorandum analyzed several features of the proposed constitution, 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. I would be happy to address any of these issues with you this afternoon. I should emphasize that our review was limited to a review of legal issues in light of the requirements established by Public Law 94-548. The Department's memorandum does not address any questions of policy.

Because I trust you have had some opportunity to review the Department's memorandum in advance of today's hearing, I will not attempt to summarize in this opening statement the analysis it provides of all of these issues. I would just briefly discuss the three issues as to which the Department suggested that changes in the proposed constitution should be considered.

A. Provisions Concerning "Native Virgin Islanders" and "Ancestral Native Virgin Islanders"

First, 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, see 48 U.S.C. § 1561 (2006). Because we find it difficult to discern a legitimate governmental purpose that would be rationally advanced by these provisions conferring legal advantages on certain groups defined by place and timing of birth, timing of residency, or ancestry, we recommend that these provisions be removed from the proposed constitution.

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, § 1.¹

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." Pro-

¹ 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, el. 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.

posed 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),² 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[] [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)).³

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

²See 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).

³See 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).

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.

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 I discussed earlier, 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.⁵

⁴The 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.

⁵ Cf. *Soto-Lopez*, 476 U.S. at 915 (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.⁶ 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 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.⁷

B. Residence Requirements for Office-Holding

Second, 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);⁸ 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. The Supreme Court has summarily affirmed three decisions upholding five- to seven-year residence requirements for state senators and governors, see *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), and lower courts have upheld relatively brief durational residency requirements for state or local offices, typically applying only rational basis review and deeming such laws adequately justified by the governmental interest in

⁶See, 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).

⁷Because 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 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).

⁸The 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.

ensuring familiarity with local concerns.⁹ But in some cases lower courts have struck down laws imposing residence requirements of five or more years on certain state or local offices.¹⁰

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.¹¹ 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.¹² Accordingly, we would recommend that consideration be given to shortening the ten- and fifteen-year residence requirements for USVI Governors, Lieutenant Governors, and judges.

C. Territorial Waters, Marine Resources, and Submerged Lands

Third, 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

⁹See, e.g., *City of Akron v. Bell*, 660 F.2d 166, 168 (6th Cir. 1981) (one-year residence requirement for city council members); *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); cf. *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).

¹⁰See, e.g., *Antonio v. Kirkpatrick*, 579 F.2d 1147, 1151 (8th Cir. 1978) (invalidating ten-year residence requirement for State Auditor); *Brill v. Carter*, 455 F. Supp. 172, 174-75 (D. Md. 1978) (invalidating four-year residence requirement for members of county council); *Billington v. Hayduk*, 439 F. Supp. 975, 978-79 (S.D.N.Y.) (invalidating five-year residence requirement for county executive), *aff’d* on other grounds, 565 F.2d 824 (2d Cir. 1977); cf. *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” and invalidating state requirement that state legislators have resided within their legislative districts for at least one year); *Pelozo v. Freels*, 871 P.2d 687, 691 (Alaska 1994) (applying heightened scrutiny under state constitution and invalidating three-year residence requirement for city council).

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”).

¹¹See, 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”).

¹²Cf. *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”).

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 authority.¹³

I would like to emphasize that my statement has focused on three aspects of the proposed constitution that we believe Congress should consider revising because we believed that discussing those provisions would be most helpful to the subcommittee as it considers what action to take in response to the transmittal of the proposed constitution. Let me close by echoing President Obama’s letter of transmittal in commending the electorate Virgin Islands and its governmental representatives in their continuing commitment to increasing self-government and the rule of law.

I would be happy to address any questions you may have. I would be grateful if the Department’s memorandum could be inserted in the record of this hearing immediately following my statement.

[NOTE: Memorandum submitted for the record has been retained in the Committee’s official files.]

Ms. BORDALLO. Thank you, Mr. Cedarbaum, very much for your testimony. And I now have the privilege of recognizing the distinguished Governor from the Virgin Islands. Governor, thank you very much for traveling here to the Nation’s Capital, although the Virgin Islands does not have as long a trip as Guam does, to be with us. And given your standing as Governor, in keeping with the tradition of our Subcommittee, please know that we will be considerate of your time and appreciate your highlighting and summarizing the key points for us to consider. Please proceed.

**STATEMENT OF HON. JOHN P. deJONGH, GOVERNOR,
U.S. VIRGIN ISLANDS**

Governor DEJONGH. Thank you. Thank you, Madame Chair. Good afternoon. My name is John deJongh, and I am Governor of the

¹³After the Department of Justice had completed its memorandum, we received a copy of a letter from several members of the Fifth Constitutional Convention to Delegate Christensen in which they raised, among other things, a concern about another article in the proposed constitution addressing submerged lands. See Letter for Hon. Donna M. Christensen, from Craig Barshinger et al. (Jan. 29, 2010). Article XV, concerning “Protection of the Environment,” provides in Section 4:

Submerged, Filled and Reclaimed Lands

Submerged lands, filled and reclaimed lands in the Virgin Islands are public lands belonging collectively to the people of the Virgin Islands, and shall not be sold or transferred. The Virgin Islands of the United States cannot be sold or transferred.

Because this provision comes in an Article on environmental protection and follows sections on establishing a land, air and water preservation commission and protecting public access to beaches, we understood it as directed at private owners. To the extent the second sentence could be read as purporting to limit Congress’s power under the Territories Clause of the Constitution, see U.S. Const. art. IV, sec., to transfer the USVI, we agree that it should be amended to remove any ambiguity on that score.

United States Virgin Islands. On behalf of the people of the Virgin Islands, I want to thank you, Madame Chair, Ranking Member Young, and my friend, Delegate Christensen, for inviting me here to be heard on this issue of enormous political, emotional, and moral importance to me and to all Virgin Islanders.

Let me begin by stating very clearly that I believe the development of a constitution for our territory is an extremely important milestone and goal for our citizens, and I look forward very much to the day when the Virgin Islands approves a constitution for all of the people to be proud of.

With respect to the proposed Virgin Islands constitution that is before you, I am here today to reiterate my already express positions on the document, which for me has come down to a very simple and straightforward issue of civil rights. Our population hails from all parts of the Caribbean and all parts of the world. Those who are native Virgin Islanders, as well as those who come and live among us in the Virgin Islands, are and must be treated as equal, fully protected by the laws of the United States and the laws of the Virgin Islands.

Virgin Islanders do not want to be treated, nor do we want our children treated, as second-class citizens when they come to the U.S. mainland, and you would not want to be treated or to have your children treated as second-class citizens if you or they moved to the United States Virgin Islands. That is why when the proposed constitution first came to me, I felt that it did not, under the terms of law that Congress had written, meet the standards that Congress had set, and indeed did not even qualify to be defined or treated as a constitution. It did not, could not, and does not now have my endorsement, my support, or my approval. And it is my belief and hope that it should not have your support either.

The question then has become what do we do, how do we respond to a fundamentally flawed proposed constitution. I believe we must be guided first and foremost by the stated principle, well-said by our first President, George Washington, the basis for our political system is the right of the people to make their own constitutions of government.

We the people of the Virgin Islands possess that right, formally conferred upon us by this body, but in truth rooted in the very sacred and inviolable American values that formed the foundation of our system of government that the founding fathers created over two centuries ago. As a native Virgin Islander, I believe with deep conviction the Virgin Islands will fully come into its own politically, economically, and culturally only when its people write and consider and ratify their own constitution, a constitution by, of, and for all people of the Virgin Islands.

At the same time, I am chief executive of the government of the Virgin Islands. In that capacity, I swore an oath before God to support, obey, and defend both the laws of the Virgin Islands and the constitution and the laws of the United States. As a native Virgin Islander and as an American, I believe these twin obligations are not and cannot be inconsistent, and it is for that reason that I took the very strong position that the proposed constitution of the United States Virgin Islands presently before you is not acceptable, and it is, in fact, unconstitutional on its face.

First, as I referenced earlier, the proposed constitution fails to recognize the supremacy of the Constitution and the laws of the United States. The Department of Justice has concluded that despite the omission of any express recognition of U.S. constitutional supremacy, the proposed constitution is in substantial compliance with the statutory requirements. Perhaps so. But that substantial compliance, such as it is, does nothing to correct the political and the symbolic harm created by the convention's conscious and deliberate decision not to expressly recognize the supremacy of the Constitution and laws of the country for which the Virgin Islands is a proud part.

Second, the proposed constitution openly creates invidious distinctions among the people of the Virgin Islands. Third, the proposed constitution is inconsistent with the principles of one-person, one-vote that lies at the heart of the concept of equality in our democracy. Under the proposed constitution, the people of the Virgin Islands would be divided into those who carry full privileges of the Virgin Islands and those who do not, between those who are eligible to serve the people, and those who are not. Such classifications could not be more contrary to the most fundamental of all American values, the self-evident truth that all men are created equal, are endowed by their creator with certain inalienable right, are entitled to equal protection of the laws.

The proposed constitution, with its carveouts and special preferences, assails these fundamental values. As a matter of U.S. constitutional law it is indefensible, as a political act it is divisive, and as a matter of history it is a dangerous step backwards in our centuries-long struggle, which has been joined by generations of Virgin Islanders for full and equal civil rights.

In addition to speaking to you about the proposed constitution and highlighting those areas of grave concern to me as Governor, I am also here to speak to you today just as importantly about the next steps for the document before this committee. I want to state for the record with equal conviction my opinion and desires for the next steps in this process, which are to be exercised by this Congress.

Congress has the authority to empower, to modify in part or in whole, the proposed constitution before you. Congress indeed has the power implicit in the statute and inherent in its legislative authority to reject the proposed constitution outright. If this should end up being the decision of this Congress, that we will abide by such and begin the process anew with an even stronger determination to ensure that a constitution is produced by a future constitutional convention that focuses on and supports the rights of all citizens of the Virgin Islands.

However, with respect to the modifications to the currently proposed constitution, I want to request clearly very clearly that the committee avoid such an option. As you know, the Minority Members of the USVI Constitutional Convention have urged this Congress to modify the proposed constitution in order to strip out its most offensive details and approve the document as amended.

I have great respect and admiration for those Minority Members who have spoken on this matter. But I urge this committee to reach a different result. I believe it is critical to the continued polit-

ical development of the Virgin Islands that our constitution when finally adopted be the product solely of the labors of the Virgin Islands. A constitution that has been edited by Congress, however good its intentions, will be seen in the territory as an exercise that runs contrary and counter to truth self-governance. It is my view that it falls to the people of the Virgin Islands to correct on its own the deficiencies so blatantly evident in the proposed constitution.

Therefore, if this proposed constitution is not rejected based on its failure to meet the requirements of constitutionality, I would request at this juncture that you return the proposed constitution to the people of the Virgin Islands and leave it to them either accept or reject this document.

I have made no secret of my views on this proposed constitution. I believe that the people should reject it. I also believe that they ultimately will. But I just as strongly believe that such a decision belongs with the people of the Virgin Islands.

In conclusion, I would simply say this. I am a native Virgin Islander. I am also an American. Those identities are not separable. To be a Virgin Islander is to be an American. The overriding flow of the proposed constitution before you is that in an effort to recognize and honor the unique contributions of those of us who are natives, it would sacrifice the values that make us Americans. As a Virgin Islander, as an American, and as an office of the government sworn to support and defend the Constitution of the United States, I cannot countenance that result. I ask that Congress not do so either, while also allowing us the ability to determine our own political faith. Thank you.

[The prepared statement of Governor deJongh follows:]

**Statement of The Honorable John de Jongh, Governor,
United States Virgin Islands**

Good afternoon. My name is John de Jongh, and I am the Governor of the United States Virgin Islands. On behalf of the people of the Virgin Islands, I want to thank the Committee and my friend Delegate Christensen for inviting me here to be heard on this issue of enormous political, emotional and moral importance to me and to all Virgin Islanders.

Let me begin by stating very clearly that I believe the development of a constitution for our Territory is an extremely important milestone and goal for our citizens and that I look very much forward to the day when the Virgin Islands approves a Constitution that all of our people can be proud of.

With respect to the proposed Virgin Islands constitution that is before you, I am here today to reiterate my already expressed positions on the document which for me has come down to a very simple and straightforward issue of civil rights.

Our population hails from all parts of the Caribbean and all parts of the world. Those who are native Virgin Islanders, as well as those who come to live among us in the Virgin Islands are, and must be, treated as equals—fully protected by the laws of the United States and the laws of the Virgin Islands. Virgin Islanders do not want to be treated, nor do we want our children treated as second class citizens when we come to the U.S. mainland and you would not want to be treated, or have your children treated as second class citizens if you or they move to the U.S. Virgin Islands.

That is why, when the proposed constitution first came to me, I felt that it did not, under the terms of the law Congress had written, meet the standards that Congress had set, indeed that it did not even qualify to be defined and treated as a constitution. It did not, could not, and does not now, have my endorsement, my support or my approval. And it is my belief, and hope, that it should not have your support either.

The question, then, has become what to do in response to a fundamentally flawed proposed constitution. I believe we must be guided, first and foremost, by a principle

stated well by our first President, George Washington: “the basis for our political system is the right of the people to make their own constitutions of government.”

We, the people of the Virgin Islands, possess that right—formally conferred unto us by this body but in truth rooted in the very sacred and inviolable American values that form the foundation of our system of government as the Founding Fathers created it over two centuries ago.

As a native Virgin Islander, I believe with deep conviction that the Virgin Islands will fully come into its own, politically, economically, and culturally, only when its people write, and consider, and ratify, their own constitution—a constitution by, of, and for all the people of the Virgin Islands.

At the same time, I am the Chief Executive of the Government of the Virgin Islands. In that capacity I swore an oath before God to “support, obey and defend” both “the laws of the Virgin Islands” and “the Constitution and laws of the United States.” As a native Virgin Islander and as an American, I believe these twin obligations are not, and cannot be, inconsistent. And it is for that reason that I took the very strong position that the proposed Constitution of the United States Virgin Islands presently before you is not acceptable and is in fact unconstitutional on its face.

First, as I referenced earlier, the proposed constitution fails to recognize the supremacy of the Constitution and laws of the United States. The U.S. Department of Justice has concluded that despite the omission of any express recognition of U.S. constitutional supremacy, the proposed constitution is in “substantial compliance” with the statutory requirements. Perhaps so. But that “substantial compliance,” such as it is, does nothing to correct the political and symbolic harm created by the convention’s conscious and deliberate decision not to expressly recognize the supremacy of the constitution and laws of the country of which the Virgin Islands is a proud part.

Second, the proposed constitution openly creates invidious distinctions among the people of the Virgin Islands.

Third, the proposed constitution is inconsistent with the principle of “one person, one vote” that lies at the heart of the concept of equality in our democracy. Under the proposed constitution, the people of the Virgin Islands would be divided into those who carry full privileges of the Virgin Islands, and those who do not; between those who are eligible to serve the people, and those who are not. Such classifications could not be more contrary to the most fundamental of all American values: the self-evident truth that all men are created equal, are endowed by their Creator with certain inalienable rights, and are entitled to the equal protection of the laws.

The proposed constitution, with its carve-outs and special preferences, assails these fundamental values. As a matter of U.S. Constitutional law, it is indefensible; as a political act, it is divisive; and as a matter of history, it is a dangerous step backwards in our centuries-long struggle, which has been joined by generations of Virgin Islanders, for full and equal civil rights.

In addition to speaking to you about the proposed constitution and highlighting those areas of grave concern to me as Governor, I am also here today to speak to you, just as importantly about the next steps for the document before this Committee. I want to state for the record, with equal conviction, my opinion and desires for the next steps in this process which are to be exercised by this Congress.

Congress has the authority and power to modify, in part, or in whole, the proposed constitution before you. Congress indeed has the power, implicit in the statute and inherent in its legislative authority, to reject the proposed constitution outright. If this should end up being the decision of this Congress then we will abide by such and begin the process anew with an even stronger determination to ensure that any constitution produced by a future constitutional convention focuses on, and supports, the rights of all the citizens of the Virgin Islands.

However, with respect to modifications to the currently proposed constitution, I want to request very clearly that the Committee avoid such an option. As you know, the minority members of the USVI Constitutional Convention have urged this Congress to modify the proposed constitution in order to strip out its most offensive details, and approve the document, as amended.

I have great respect and admiration for those minority members who have spoken out on this matter; but I urge this Committee to reach a different result. I believe it is critical to the continued political development of the Virgin Islands that our constitution, when finally adopted, be the product solely of the labors of Virgin Islanders.

A constitution that has been edited by Congress, however good its intentions, will be seen in the Islands as an exercise that runs contrary and counter to true local self-governance.

It is my view that it falls to the people of the Virgin Islands to correct, on our own, the deficiencies so blatantly evident in the proposed constitution. Therefore if this proposed constitution is not rejected based on its failure to meet the requirements of constitutionality, I would request, at this juncture, that you return the proposed constitution to the people of the Virgin Islands and leave it to them to either accept, or reject this document.

I have made no secret of my views on this proposed constitution. I believe that the people should reject it, and also believe that they ultimately will. But I just as strongly believe that such a decision belongs with the people of the Virgin Islands.

In conclusion, I would simply say this. I am a native Virgin Islander. I am also an American. Those identities are not separable: to be a Virgin Islander is to be an American. The overriding flaw of the proposed constitution before you is that, in its effort to recognize and honor the unique contributions of those of us who are natives, it would sacrifice the values that make us Americans.

As a Virgin Islander, as an American, and as an officer of the government sworn to support and defend the Constitution of the United States, I cannot countenance that result. I ask that Congress not do so either while also allowing us the ability to determine our own political fate.

Thank you

Ms. BORDALLO. Thank you very much, Governor, for your statement. And, Senator Richards, we welcome your testimony, and you are now recognized for five minutes.

**STATEMENT OF HON. USIE R. RICHARDS, MINORITY LEADER,
28TH LEGISLATURE OF THE VIRGIN ISLANDS**

Mr. RICHARDS. Good afternoon. I am Usie R. Richards, a senator and Minority Leader of the 28th Legislature of the Virgin Islands. I want to begin by thanking you for your invitation to share my views. Let me state from the onset, I stand firmly on the principle that the process should ensure that the document developed by the citizens and registered voters of the Virgin Islands, who were elected to the Fifth Constitutional Convention by registered voters throughout the unincorporated territory of the Virgin Islands be given the opportunity to be voted upon by the voters that began this process through its elected representatives in the 25th Legislature.

Much has been said and written regarding a number of issues surrounding the content of the document, and today I intend to offer my perspective on what has transpired. I have no intention to declare what is correct or incorrect, but more importantly to provide a perspective that should aid this body in understanding the conditions and circumstances under which much of the documents content has evolved.

I am reminded of my testimony shared before the Committee on Resources on May 17, 2000, as it related to H.R. 3999, a proposal clarifying the process for the adoption of local constitutional self-government for the Virgin Islands. The failure to act on recommendations made almost a decade ago continues to hamper the attempt of our populace to secure some greater level of self-government.

Today, elected, appointed, and in some cases anointed members of our community remain entrenched in heated discussions and debates relating to this proposed constitution. Despite all of this, I understand the foundation that these issues have sat on for so many years. The Virgin Islands has been and remains today an incorporated territory of the United States, its subject matter best

described by former Congressman Robert Underwood, from Guam, in his introduction of H.R. 1521, the Guam Commonwealth Bill. And he stated, "Guam is currently an incorporated territory. An incorporated territory means that first, laws can be imposed upon the people of Guam without consultation; second, any local law can be abrogated by the U.S. Congress; third, U.S. citizenship can be taken away from the people of Guam; fourth, Guam can be bought, sold, or traded by the Federal Government; and fifth, Guam as a territory is in the truest sense a possession." All I ask you is to insert Virgin Islands in the place of Guam.

When the members of the Fifth Constitutional Convention declared in its preamble, "Assuming the responsibilities of self-government as an incorporated territory of the United States, as acknowledged by Assistant Attorney General Ronald Rich, this clearly illustrates the right and acknowledgment of United States sovereignty." I would hope that the learned amongst us would recognize that the term "unincorporated territory" clearly speaks to an entity that is subservient to and lacks the wherewithal to freely act on its own. Whether a statement is explicit or implicit becomes a matter of semantics.

Likewise, the supremacy of Federal law is recognized by the Fifth Constitutional Convention, proposed with its inclusion of the relevance of the 1917 treaty between the United States and Denmark, and its recognition of the rights of U.S. court to review decisions of local courts under the U.S. Constitution and Federal laws. As concluded by Attorney Rich, we believe the proposed constitution is in substantial compliance with subsection 2(b)(1) of the enabling act.

While I am cognizant of the trepidations that may have been created by the inclusion of language in the proposed constitution, addressing the issue of classifications based on place and timing of birth, timing of residence, and ancestry, I must remind you that much of this stems from prior actions of this body. This body has enacted laws to address education for the native Hawaiian and Alaskan in Public Law 103-382 of 1994. In the northern Marianas, this body has recognized the significance of restrictions of alienation of land in article 12 of the commonwealth constitution, while giving special preference to Native American, Samoan, in 16 U.S. Code, chapter 1, on national parks, military parks, monuments, and seashores. And Public Law 4-14 of 1952, entitled Free Nationality and Naturalization, this body went to great lengths to determine and define who shall be considered a citizen. If the person was born in Puerto Rico on or after April 11, 1899, born in the Canal Zone, or Republic of Panama after February 26, 1904, born in Alaska on or after March 20 of 1867, born in Hawaii on or after August 12 of 1898, living in and born Virgin Islands subsequent to January 17, 1917, and prior to February 25, 1927, and living in and born in Guam after April 11, 1889, and declared citizens of the U.S. as of August 1, 1950.

Not only has this body exercised the authority as it relates to citizenship, but even in a case of public lands, in section 1601 of the Alaska Native Claims Act, this body has defined who ought to have the right to redress under this law. This inalienable right is further defined in section 3 of Public Law 92-203 of 1971, as it re-

lates to the declaration of settlement in the State of Alaska. In H.R. 1056, section 102, this body not only recognized the inalienable right of self-determination of the indigenous Chamorro people of Guam, but also allows for the constitution to establish reasonable residency requirements for the citizens of such commonwealth for the purposes of the right to vote in commonwealth elections or to hold any elected office by the constitution of Guam.

This body has unlimited power over the unincorporated territory of the U.S. Virgin Islands. This body authorized citizenship to the indigenous people of the unincorporated territory of the Virgin Islands in 1927, a full 10 years after the 1917 purchase from Denmark, a citizenship that was not fully conferred until as late as 1940. Obviously, the enactment of congressional laws to protect or enhance the status of indigenous peoples in both possessions and states of the United States has created a sense and need to address the status of the indigenous in the Virgin Islands.

The body has placed itself in the position to now address or redress the inequities created by the purchase of land with no real regard to the then occupants that resulted in uncontrolled population growth, outside economic dominance, deterioration of our social mores, and an infiltration of our political process. As a matter of fact, the Eastern Caribbean Center of the University of the Virgin Islands in their research news from ECC inform us that there are some 58,786 Virgin Island natives living in the United States in 2008. Since 1980, almost eight out of ten of all natives in the U.S. had migrated there. Between 1980 and 1989, 13,184 natives moved away. Between 1990 and 1999, 17,550 emigrated. And between 2000 and 2009, 15,143 natives took up residence in the States. This is according to the 2008 Community Service Public Use microdata.

Accordingly, the Virgin Islands Community Service indicates that the total population of the Virgin Islands was 114,744. Simply put, the 58,786 Virgin Islands natives living in the United States represent more than half of the current resident population of the Virgin Islands. It is therefore conceivable why the writers of the proposed constitution gave great weight and consideration to native Virgin Islanders living abroad.

The point is if this body can address such issues as citizenship, economics, social needs, property, settlements, trust lands, exclusive economic zones, education, alienation of land, parks, and others, then surely this body can ensure the inalienable rights of the indigenous people of the Virgin Islands to pursue greater self-government through the drafting, voting, and adoption of a constitution. I believe the annals of this body said it best. This is a matter to be considered by the voters, or perhaps at some future time by the courts.

I urge you to allow the voters of the U.S. Virgin Islands to exercise some semblance of democracy by being able to consider the content developed by their duly elected members to the Fifth Constitutional Convention. I thank you for your time and your consideration.

[The prepared statement of Mr. Richards follows:]

**Statement of The Honorable Usie R. Richards, Minority Leader,
28th Legislature of the Virgin Islands**

GOOD AFTERNOON, CHAIRWOMAN BORDALLO, MEMBERS OF THE SUB-COMMITTEE ON INSULAR AFFAIRS, OCEANS AND WILDLIFE, MEMBERS OF CONGRESS AND ALL OTHERS, I AM USIE R. RICHARDS, A SENATOR AND THE MINORITY LEADER OF THE 28TH LEGISLATURE OF THE VIRGIN ISLANDS. THANK YOU FOR YOUR INVITATION TO SHARE MY VIEWS ON THE PROPOSED CONSTITUTION THAT IS BEFORE YOU. LET ME STATE FROM THE ONSET, I STAND FIRMLY ON THE PRINCIPLE THAT THE PROCESS SHOULD ENSURE THAT THE DOCUMENT DEVELOPED BY THE CITIZENS AND REGISTERED VOTERS OF THE VIRGIN ISLANDS, WHO WERE ELECTED TO THE FIFTH CONSTITUTIONAL CONVENTION BY REGISTERED VOTERS THROUGHOUT THE UNINCORPORATED TERRITORY OF THE VIRGIN ISLANDS, BE GIVEN THE OPPORTUNITY TO BE VOTED UPON BY THE VOTERS THAT BEGAN THIS PROCESS THROUGH ITS ELECTED REPRESENTATIVES IN THE 26TH LEGISLATURE. MUCH HAS BEEN SAID AND WRITTEN REGARDING A NUMBER OF ISSUES SURROUNDING THE CONTENT OF THE DOCUMENT AND TODAY I INTEND TO OFFER MY PERSPECTIVE ON WHAT HAS TRANSPIRED. I HAVE NO INTENTION TO DECLARE WHAT IS CORRECT OR INCORRECT, BUT MORE IMPORTANTLY TO PROVIDE A PERSPECTIVE THAT SHOULD AID THIS BODY IN UNDERSTANDING THE CONDITIONS AND CIRCUMSTANCES UNDER WHICH MUCH OF THE DOCUMENT'S CONTENT HAS EVOLVED.

I AM REMINDED OF MY TESTIMONY SHARED BEFORE THE COMMITTEE ON RESOURCES, CHAIRED BY REPRESENTATIVE DON YOUNG ON MAY 17, 2000, AS IT RELATED TO H.R. 3999, A PROPOSAL "CLARIFYING THE PROCESS FOR THE ADOPTION OF LOCAL CONSTITUTIONAL SELF-GOVERNMENT FOR THE VIRGIN ISLANDS". THE FAILURE TO ACT ON RECOMMENDATIONS MADE ALMOST A DECADE AGO CONTINUES TO HAMPER THE ATTEMPT OF OUR POPULACE TO SECURE SOME GREATER LEVEL OF SELF-GOVERNMENT IN THE VIRGIN ISLANDS.

TODAY, ELECTED, APPOINTED AND IN SOME CASES "ANNOINTED" MEMBERS OF OUR COMMUNITY REMAIN ENTRENCHED IN HEATED DISCUSSIONS AND DEBATES RELATING TO THIS PROPOSED CONSTITUTION. DESPITE ALL OF THIS, I UNDERSTAND THE FOUNDATION THAT THESE ISSUES HAVE SAT ON FOR SO MANY YEARS. THE VIRGIN ISLANDS HAS BEEN, AND REMAINS TODAY, AN UNINCORPORATED TERRITORY OF THE UNITED STATES, A SUBJECT MATTER BEST DESCRIBED BY FORMER CONGRESSMAN ROBERT UNDERWOOD FROM GUAM IN HIS INTRODUCTION OF H.R.1521 THE GUAM COMMONWEALTH BILL. HE STATED, "GUAM IS CURRENTLY AN UNINCORPORATED TERRITORY, AN UNINCORPORATED TERRITORY MEANS THAT FIRST, LAWS CAN BE IMPOSED UPON THE PEOPLE OF GUAM WITHOUT CONSULTATION, SECOND, ANY LOCAL LAW CAN BE ABROGATED BY THE U.S. CONGRESS, THIRD, U.S. CITIZENSHIP CAN BE TAKEN AWAY FROM THE PEOPLE OF GUAM, FOURTH, GUAM CAN BE BOUGHT, SOLD OR TRADED BY THE FEDERAL GOVERNMENT, AND FIFTH, GUAM AS A TERRITORY IS IN THE TRUEST SENSE A POSSESSION". WHEN THE MEMBERS OF THE 5TH CONSTITUTIONAL CONVENTION DECLARE IN ITS PREAMBLE, "ASSUMING THE RESPONSIBILITIES OF SELF-GOVERNMENT AS AN UNINCORPORATED TERRITORY OF THE UNITED STATES", AS ACKNOWLEDGED BY ASSISTANT ATTORNEY GENERAL RONALD WEICH, THIS CLEARLY ILLUSTRATES THE WRITERS' ACKNOWLEDGEMENT OF UNITED STATES SOVEREIGNTY. I WOULD HOPE THAT THE LEARNED AMONGST US, WOULD RECOGNIZE THAT THE TERM "UNINCORPORATED TERRITORY", CLEARLY SPEAKS TO AN ENTITY THAT IS SUBSERVANT TO AND LACKS THE WHEREWITHAL TO FREELY ACT ON ITS OWN. WHETHER THE STATEMENT IS EXPLICIT OR IMPLICIT BECOMES A MATTER OF SEMANTICS.

LIKewise, THE SUPREMACY OF FEDERAL LAW IS RECOGNIZED BY THE 5TH CONSTITUTIONAL CONVENTION, PROPOSED WITH ITS INCLUSION OF THE RELEVANCE OF THE 1917 TREATY BETWEEN THE UNITED STATES AND DENMARK AND ITS RECOGNITION OF THE RIGHTS OF U.S. COURTS TO REVIEW DECISIONS OF LOCAL COURTS UNDER THE U.S. CONSTITUTION AND FEDERAL LAWS. AS CONCLUDED BY ATTORNEY WEICH, "WE BELIEVE THE PROPOSED CONSTITUTION IS IN SUBSTANTIAL COMPLIANCE WITH SUBSECTION 2(b)(1) OF THE ENABLING ACT". WHILE I REMAIN COGNIZANT OF THE TREPIDATIONS THAT MAY HAVE BEEN CREATED BY THE

INCLUSION OF LANGUAGE IN THE PROPOSED CONSTITUTION ADDRESSING THE ISSUE OF "CLASSIFICATIONS BASED ON PLACE AND TIMING OF BIRTH, TIMING OF RESIDENCE, AND ANCESTRY", I MUST REMIND YOU THAT MUCH OF THIS STEMS FROM PRIOR ACTIONS OF THIS BODY. THIS BODY HAS ENACTED LAWS TO ADDRESS EDUCATION FOR THE NATIVE HAWAIIAN AND ALASKAN IN "P.L. 103-382 OF OCTOBER 20, 1994". IN THE NORTHERN MARIANAS THIS BODY HAS RECOGNIZED THE SIGNIFICANCE OF RESTRICTIONS OF ALIENATION OF LAND IN "ARTICLE XII OF THE COMMONWEALTH CONSTITUTION", WHILE GIVING SPECIAL PREFERENCE TO THE NATIVE AMERICAN SAMOAN IN "16 USC, CHAPTER 1 ON NATIONAL PARKS, MILITARY PARKS, MONUMENTS, AND SEASHORES". IN P.L. 414-JUNE 27, 1952 IN TITLE III-NATIONALITY AND NATURALIZATION, THIS BODY WENT TO GREAT LENGTHS TO DETERMINE AND DEFINE WHO SHALL BE CONSIDERED A CITIZEN, "IF THE PERSON WAS BORN IN PUERTO RICO ON OR AFTER APRIL 11, 1899; BORN IN THE CANAL ZONE OR REPUBLIC OF PANAMA AFTER FEBRUARY 26, 1904; BORN IN ALASKA ON OR AFTER MARCH 20, 1867; BORN IN HAWAII ON OR AFTER AUGUST 12, 1898; LIVING IN AND BORN IN THE VIRGIN ISLANDS SUBSEQUENT TO JANUARY 17, 1917, AND PRIOR TO FEBRUARY 25, 1927; AND LIVING IN AND BORN IN GUAM AFTER APRIL 11, 1899 AND DECLARED CITIZENS OF THE U.S. AS OF AUGUST 1, 1950". NOT ONLY HAS THIS BODY EXERCISED THEIR AUTHORITY AS IT RELATES TO CITIZENSHIP, BUT EVEN IN THE CASE OF PUBLIC LANDS IN "SECTION 1601 OF THE ALASKA NATIVE CLAIMS ACT" THIS BODY HAS DEFINED WHO OUGHT TO HAVE THE RIGHT TO REDRESS UNDER THIS LAW. THIS INALIENABLE RIGHT IS FURTHER DEFINED IN "SECTION 3, OF P.L. 92-203 OF DECEMBER 18, 1971", AS IT RELATES TO THE DECLARATION OF SETTLEMENT IN THE STATE OF ALASKA. IN "H.R. 1056 IH, SECTION 102"., THIS BODY NOT ONLY RECOGNIZES THE INALIENABLE RIGHT OF SELF-DETERMINATION OF THE INDIGENOUS CHAMARRO PEOPLE OF GUAM, BUT ALSO ALLOWS FOR "THE CONSTITUTION TO ESTABLISH REASONABLE RESIDENCY REQUIREMENTS FOR THE CITIZENS OF SUCH COMMONWEALTH FOR THE PURPOSES OF THE RIGHT TO VOTE IN COMMONWEALTH ELECTIONS OR TO HOLD ANY ELECTIVE OFFICE BY THE CONSTITUTION OF GUAM".

THIS BODY HAS UNLIMITED POWER OVER THE UNINCORPORATED TERRITORY OF THE VIRGIN ISLANDS. THIS BODY AUTHORIZED CITIZENSHIP TO THE INDIGENOUS PEOPLE OF THE UNINCORPORATED TERRITORY OF THE VIRGIN ISLANDS IN 1927, A FULL TEN YEARS AFTER THE 1917 PURCHASE FROM DENMARK, A CITIZENSHIP THAT WAS NOT FULLY CONFERRED UNTIL AS LATE AS 1940. OBVIOUSLY, THE ENACTMENT OF CONGRESSIONAL LAWS TO PROTECT OR ENHANCE THE STATUS OF INDIGENOUS PEOPLES IN BOTH POSSESSIONS AND STATES OF UNITED STATES HAS CREATED THE SENSE AND NEED TO ADDRESS THE STATUS OF THE INDIGENOUS IN THE VIRGIN ISLANDS. THIS BODY HAS PLACED ITSELF IN THE POSITION TO NOW ADDRESS OR REDRESS THE INEQUITIES CREATED BY THE PURCHASE OF A LAND WITH NO REAL REGARD TO THE THEN OCCUPANTS THAT RESULTED IN UNCONTROLLED POPULATION GROWTH, OUTSIDE ECONOMIC DOMINANCE, DETERIORATION OF OUR SOCIAL MORES AND AN INFILTRATION OF OUR POLITICAL PROCESS.

AS A MATTER OF FACT, THE EASTERN CARIBBEAN CENTER OF THE UNIVERSITY OF THE VIRGIN ISLANDS, IN THEIR "RESEARCH NEWS FROM ECC", RELEASED IN JANUARY OF 2010, INFORMED U.S. OF THAT SOME 58,786 VIRGIN ISLANDS NATIVES LIVING IN THE UNITED STATES IN 2008. "SINCE 1980, ALMOST 8 OUT OF 10 OF ALL NATIVES IN THE U.S. HAD MIGRATED THERE. BETWEEN 1980 AND 1989, 13,184 NATIVES MOVED AWAY...BETWEEN 1990 AND 1999, 17,550 EMIGRATED...AND BETWEEN 2000 AND 2009 15,143 NATIVES TOOK UP RESIDENCE IN THE STATES". THIS IS ACCORDING TO THE 2008 AMERICAN COMMUNITY SURVEY (acs) PUBLIC USE MICRODATA SAMPLE FILE. ACCORDINGLY, THE VIRGIN ISLANDS COMMUNITY SURVEY (VICS) INDICATES THAT THE TOTAL POPULATION OF THE USVI WAS 114,744. SIMPLY PUT, THE 58,786 VIRGIN ISLANDS NATIVES LIVING IN THE UNITED STATES REPRESENTS MORE THAN HALF OF THE CURRENT RESIDENT POPULATION OF THE VIRGIN ISLANDS. IT IS THEREFORE CONCEIVABLE WHY THE WRITERS OF THE PROPOSED CONSTITUTION GAVE GREAT WEIGHT AND CONSIDERATION TO NATIVE VIRGIN ISLANDERS LIVING ABROAD.

THE POINT IS, IF THIS BODY CAN ADDRESS SUCH ISSUES AS CITIZENSHIP, ECONOMICS, SOCIAL NEEDS, PROPERTY, SETTLEMENTS, TRUST

LAND, EXCLUSIVE ECONOMIC ZONES, EDUCATION, ALIENATION OF LAND, PARKS AND OTHERS, THEN SURELY THIS BODY CAN ENSURE THE INALIENABLE RIGHTS OF THE INDIGENOUS PEOPLE OF THE VIRGIN ISLANDS TO PURSUE GREATER SELF-GOVERNMENT THROUGH THE DRAFTING, VOTING AND ADOPTION OF A CONSTITUTION.

I BELIEVE THE ANNALS OF THIS BODY SAID IT BEST, "THIS IS A MATTER TO BE CONSIDERED BY THE VOTERS, OR PERHAPS, AT SOME FUTURE TIME, BY THE COURTS". I URGE YOU TO ALLOW THE VOTERS OF THE U.S. VIRGIN ISLANDS TO EXERCISE SOME SEMBLANCE OF DEMOCRACY BY BEING ABLE TO CONSIDER THE CONTENT DEVELOPED BY THEIR DULY ELECTED MEMBERS TO THE 5TH CONSTITUTIONAL CONVENTION. I THANK YOU FOR YOUR TIME AND CONSIDERATION.

Ms. BORDALLO. I thank you very much, Senator Richards. And last, we will turn to the former Lieutenant Governor, Mr. James. Mr. James, you are recognized for five minutes.

**STATEMENT OF HON. GERARD LUZ JAMES II, PRESIDENT,
FIFTH CONSTITUTIONAL CONVENTION**

Mr. JAMES. Thank you very much, Madame Chair, and good afternoon, Madame Chairperson Bordallo, committee members, and all others present. I am Gerard Luz James II. I am the President of the Fifth Constitutional Convention of the United States Virgin Islands, and I have with me today Dr. Lois Hassell-Habtes, Adelbert Bryan, and Gerard Emanuel, who are here in official capacities as representatives of the Fifth Constitutional Convention.

Elected at large by the people of the four islands paradise, which we proudly call home, it is my distinct honor to address this committee regarding the adoption last May by our convention of the proposed constitution for consideration by Congress. The convention is fully aware that our proposed constitution is not designed to usurp the sovereignty or supremacy of Federal law, and that the passage of our constitution will not, nor is it intended to, alter our political relationship with the United States.

It represents a further step along the path to the full measure of self-government. This is our fifth attempt to attain greater self-government since Congress passed P.L. 94-584 in 1976, which granted us the authority to draft our own constitution. The Revised Organic Act of 1954—the Organic Act has served as the guiding law for the Virgin Islands for 56 years, with no input from the population it governs.

On June 12, 2007, a special election was held to select delegates from throughout the territory to draft a constitution. The keen interest of the Virgin Islands in this process was evident from the inception, when voters elected delegates from a field of 135 candidates. Thirty delegates were elected and served as drafters of the constitution. The elected delegates were composed of a former Governor, a Lieutenant Governor, four former senators, two sitting senators elected during the term of the convention, a former district court judge, three practicing attorneys, farmers, professors, teachers, and political activists.

Upon convening in December of 2007, the convention formed 12 committees which were charged with conducting public hearings on the areas which are now in part our proposed constitution. The work of our convention was impeded at about the onset for six months by the court challenge to the results of the election by our

unsuccessful candidate, and further delayed in midstream as the convention awaited the balance of the operating funds appropriated by the legislature.

The level of funding was in itself an impediment, with the Fifth Constitutional Convention receiving significantly less funding than the fourth constitutional convention, which met some 30 years ago. The convention conducted a series of well publicized public hearings, committee hearings, and plenary sessions comprising hundreds of hours of testimony and debate and many volumes of transcribed records. These meetings were attended by Virgin Islanders from all walks of life, included but not limited to students, political activists, several religious leaders, as well as private citizens.

We also consulted with representatives of a wide range of leaders of several organizations and institutions, including the president and the department heads of the University of the Virgin Islands. We are proud to report that at the end of this protracted process, in May of last year, the convention was able to reach a required majority consensus, and our proposed constitution passed with two-thirds vote of 20 delegates. The document was transmitted to our Governor on May 31, 2009.

A major area of public discussion during this process was extensive debate on the crafting of the definition of Virgin Islander according to 1917 treaty accession, through which the territory was purchased by the United States from Denmark. The political rights and citizenship and the inhabitants of the territory at that time of transfer was subsequently to be determined by U.S. Congress.

The citizenship of the island's population at the time of the transfer, which was predominantly comprised of former enslaved Africans and their descendants, was not determined until 10 years later. Article 3 of the proposed constitution defining ancestral native Virgin Islanders was based on Federal law emerging from that period. It is also consistent with the definition of native population in the constitution on other unincorporated territories.

The proposed constitution provides a broader definition of a native Virgin Islander as a person born in the territory or as a descendant of a native. The definition was imperative for several historical reasons. From the early 1970s, we have experienced a dramatic decline of our native-born population. According to the 2007 study conducted by the University of the Virgin Islands, as of 2005, the percentage was approximately 51.3 percent. This decline has significant implications for the self-identity of our people.

The proposed constitution also provides that only ancestral or native Virgin Islanders are eligible to serve as Governor, Lieutenant Governor, and members of the proposed future political status advisory commission. These provisions address the unique culture and political backdrop of our islands. Additionally, a provision to exempt ancestral Virgin Islanders from paying property tax has been included to protect the disenfranchised native population from significant externally motivated commercial land speculation, which continues to result in the erosion of the natives' ability to retain and purchase property. It is also consistent with several relevant general assembly resolutions, which mandated that all necessary steps be taken to protect the property rights of the peoples of the territories on the United Nations list of non-self-governing terri-

tories. The Virgin Islands, along with American Samoa and Guam remain on that list today.

Similarly, our native rights provisions are part of the constitutions of other U.S.-administered territories, specifically those of American Samoa and the northern Marianas, both of which have a comparable island geographical make-up, and the same unincorporated political status as the U.S. Virgin Islands.

We strongly feel that these provisions are not discriminatory and do not violate Federal law as it is presently applied to the Virgin Islands and support the compelling state interests.

My fellow delegates' testimony will address these issues in greater detail. Throughout history, our shores have remained open to people of all cultures and ethnicities. The Virgin Islands has long been known as the American Paradise, Madame Chair. The proposed constitution is our sincere effort and attempt to ensure that the beloved territory remains our Virgin Islands home. I thank you very much, Madame Chair.

[The prepared statement of Mr. James follows:]

**Statement of Gerard Luz Amwur James II, President,
Fifth Constitutional Convention of the U.S. Virgin Islands**

Good Morning Chairperson Bordallo, Committee members and all others present. My name is Gerard Luz Amwur James II. I am the President of the Fifth Constitutional Convention of the U.S. Virgin Islands, elected at large by the people of our four island paradise which we proudly call home. It is my distinct honor to address this Committee regarding the adoption last May by our Convention of the proposed constitution for consideration by Congress.

I must first emphasize that the Convention is fully aware that our proposed constitution is not designed to usurp the sovereignty or supremacy of federal law and that the passage of our constitution will not, nor is it intended to, alter our political relationship with the United States. It represents a further step along the path toward a full measure of self-government.

This is our fifth attempt to attain greater self government since Congress passed P.L. 94-584 in 1976 which granted us the authority to draft our own constitution. When passed by referendum of the voters of the Virgin Islands it will replace the Revised Organic Act of 1954. The Organic Act has served as the governing law of the Virgin Islands for fifty six years with no input from the population it governs.

On June 12, 2007, a special election was held to select delegates from throughout the territory to draft the constitution. The keen interest of Virgin Islanders in this process was evident from the inception when voters elected delegates from a field of 135 candidates. Seventeen ran at large with the remaining candidates running from their respective jurisdictions. Thirty delegates were elected, and served as drafters of the constitution. The elected delegates were composed of a former Governor, four former senators, two sitting senators (elected during the term of the convention), a former District Court Judge, three practicing attorneys, farmers, professors, teachers and political activists.

Upon convening in December of 2007, the Convention formed twelve committees which were charged with conducting public hearings on the areas which are now part of our proposed constitution. The Convention was initially mandated by enabling Virgin Islands legislation to finalize a draft constitution by October 6, 2008, but the period was later extended.

The work of our Convention was impeded at the outset for six months by a court challenge to the results of the election by an unsuccessful candidate, and further delayed in mid-stream as the convention awaited the balance of the operating funds appropriated by the Legislature. The level of funding was itself an impediment with the Fifth Constitutional Convention receiving significantly less funding than the Fourth Constitutional Convention which met some thirty years ago.

This caused several inordinate delays in the drafting process and necessitated an extension of the time frame for submission to our governor. Despite these constraints, the Convention conducted a series of well publicized public hearings, committee hearings and plenary sessions comprising hundreds of hours of testimony and debate and many volumes of transcribed records. These meetings were attended by Virgin Islanders from all walks of life including but not limited to students, polit-

ical activists, several religious leaders, as well as private citizens. We also consulted with representatives of a wide range of leaders of several local organizations and institutions including the President and department heads of the University of the Virgin Islands.

Unfortunately, insufficient resources and time constraints resulted in our inability to conduct an adequate public relations campaign. Also, the hard work of the Convention was often sensationalized and marginalized by the media's focus on specific issues and individuals, rather than on our substantive work.

Through it all, we are proud to report that at the end of this protracted process, in May of last year, the convention was able to reach the required majority consensus and our proposed constitution passed with a two-thirds vote of 20 delegates. The document was transmitted to our Governor on May 31, 2009, meeting our extended deadline.

A major area of public discussion during this process was extensive debate on the crafting of the definition of a Virgin Islander. According to the 1917 treaty, through which the territory was purchased by the United States from Denmark, the political rights and citizenship of the inhabitants of the territory at the time of transfer would subsequently be determined by the U.S. Congress. The citizenship of the islands' population at the time of the transfer, which was predominately comprised of former enslaved Africans and their descendents, was not determined until ten years later. Article III of the proposed constitution defining Ancestral Native Virgin Islander was based on federal law emerging from that period (See Section 306 INA (8 U.S.C. 1406)). It is also consistent with the definition of native populations in the constitutions of other un-incorporated territories.

The proposed constitution provides a broader definition of a Native Virgin Islander as a person born in the territory, or a descendent of a native. The delegates felt that the inclusion of this definition was imperative for several historical reasons. From the early seventies we have experienced a dramatic decline of our native-born population. According to a 2007 study conducted by the University of the Virgin Islands as of 2005 the percentage was approximately 51.3 %. This decline has significant implications for the self-identity of our people.

The proposed constitution also provides that only Ancestral or Native Virgin Islanders are eligible to serve as governor and Lieutenant governor, and as members of a proposed future political status advisory commission. These provisions address the unique culture and political backdrop of our islands.

Additionally, a provision to exempt Ancestral Virgin Islanders from paying property tax has been included. This provision is designed to protect the disenfranchised native population from significant externally motivated commercial land speculation which continues to result in the erosion of natives' ability to retain and purchase property. It is also consistent with several relevant General resolutions, most recently operative paragraph 9 of the United Nations General Assembly Resolution 63/108, which mandates that all necessary steps be taken to protect the property rights of the peoples of the territories on the United Nations list of non self-governing territories. The Virgin Islands, along with American Samoa and Guam, remain on that list today.

Similar native rights provisions are part of the constitutions of other U.S. administered territories, specifically those of American Samoa and the Northern Marianas, both of which have a comparable island geographical make up, and the same unincorporated political status as the U.S. Virgin Islands.

We strongly feel that these provisions are not discriminatory, and do not violate federal law as it is presently applied to the Virgin Islands and supports a compelling state interest. My fellow delegates' testimony will address these issues in greater detail. Further elaboration is contained in our response to the Department of Justice analysis which has been submitted for your consideration and review. Throughout history our shores have remained open to people of all cultures and ethnicities. The Virgin Islands has long been known as the "American Paradise." The proposed constitution is our sincere effort attempt to insure that our beloved territory remains our "Virgin Islands Home."

Thank you again for your time and your thoughtful review of our Constitution

Ms. BORDALLO. I thank the former Lieutenant Governor, Mr. James, for your testimony. And this completes the testimony from our first panel of witnesses. I will now recognize the members of the Subcommittee for questions that they may have, alternating between the Majority and the Minority, and I will begin with myself.

The first question I have is for you, Assistant Secretary Cedarbaum, Department of Justice. What would happen if Congress were to allow this proposed constitution to be returned unchanged to the people of the Virgin Islands, and it was adopted. Would the questionable provisions that you suggest should be changed be enforceable?

Mr. CEDARBAUM. Madame Chairwoman, thank you for that question. Under the terms of Public Law 94-584, if Congress allowed the proposed constitution to go back for a referendum by the people of the Virgin Islands, and the people of the Virgin Islands approved it in the referendum, the constitution would take effect. But that process would not cure any constitutional defects that may exist in any of its provisions. So they would be subject to legal challenge at that point, and the challengers would have to go to court to see whether particular provisions would or would not be constitutional.

Ms. BORDALLO. The next question is for you, Governor. If Congress sends the proposed constitution back to the Virgin Islands without amendment, and it is rejected, as you have urged, in a referendum by the people, what do you see as the next step?

Governor DEJONGH. If it is sent back, as I said earlier in my testimony, I think this is an important milestone and goal for the people of the Virgin Islands. If the Constitution is returned and it is rejected, I would then first of all work and immediately work with the legislature to see what we could do to start the process of forming another constitutional convention.

Ms. BORDALLO. All right. Another question along the same lines. Is there no way to address the concerns of some of the convention delegates which are represented by the provisions they included in the constitution, which they say are necessary for the protection and the preservation of the culture and the traditions of Virgin Islanders?

Governor DEJONGH. I believe overall that the work that was done indicates a process where concerns were taken into account. But the Virgin Islands at this point in time in its history is represented by a multitude of individuals and ethnicities within the islands. I think the best way for this to be addressed, Madame Chair, is for the constitution to be returned to the Virgin Islands and to let us vote on it to determine exactly what happens and at what point there is any challenge, if it passes. But as I have reiterated and stated in my statement, I do not believe it will such, and we will get back to a point of looking at another constitutional convention.

Ms. BORDALLO. Another question I have for you, President James. It is my understanding that the proposed constitution was approved by two-thirds vote of the delegates. Now was that difficult to accomplish, or were all the delegates more or less on the same page with regards to the constitution's content?

Mr. JAMES. There was some difficulty in getting to where we are today. But we did have a discussion, and we came to a meeting of the minds and were able to come up with what we have in front of you today.

Ms. BORDALLO. And I have another question for you as well. What do you see as the prospects for the Virgin Islands adopting a constitution if this effort from the Fifth Constitution convention

is rejected by the voters? What do you see? Do you see a further process going on after this?

Mr. JAMES. I think, to be quite honest, it has been 30 years from the last. I may not see one in my lifetime. I think that what we need to do at this present time is to move forward with what we have. We have listened to the presentations today by the various individuals on the daises, as myself, and they have delivered. And it has been shown that in other areas, things have been done by this body in order to address the situations that may have—just like native rights and other individuals like that.

I think that what we can do is just send it to the people and let the people vote on it, and let us see what will happen. But I hope that it will pass and we can amend or do whatever we have to do at a later time.

Ms. BORDALLO. Well, that is part of my philosophy, you know, get your foot in the door, and then later on you can either repeal or amend, you know, whatever you feel is not right.

Mr. JAMES. Yes, ma'am.

Ms. BORDALLO. I would like at this time now to recognize the Ranking Member, Mr. Young, for questions.

Mr. YOUNG. Thank you, Madame Chairman. I want to compliment the panel. You all spoke very well, other than the Lieutenant Governor. I was not here for you, and I apologize. I had a phone call I had to take. But I am sure yours was as good as the rest of them.

My concern is—and by the way, the Justice Department, you do bring up some valid points. And why would anyone want to send back to the people to vote on something that is going to go to court and be drug out for a period of time because I do think some of this is unconstitutional. The fishery rights three miles, which I am very much aware of. The recognition of individual groups by time. You know, this happened in my state, where we had a time frame where you had to live only a year, and that was taken to court and was knocked down to six months. Why six months, I don't know. But it is a long protracted process of doing it.

Why would anybody want to—Governor, you can address it. Why would anybody want to have us accept this and have it go back and really end up in court. I think the Justice Department addressed that one. So you are the Governor, I don't care which one, or both.

Mr. CEDARBAUM. I think that is a question for the Governor.

Mr. YOUNG. OK, Governor.

Governor DEJONGH. Sure. I think that what we have to consider is that ultimately all the decisions that we make are decisions that are judged and voted on and accepted or rejected by the people that we are professing to lead. This was a process—and what is interesting today is that I, Senator Richards, and the former Lieutenant Governor, Gerard James, chair of the convention, all come to the same conclusion through different paths. And that path is to allow us the opportunity to take it back to the people to be able to vote on exactly what they initially started in the process. And I believe that while we may have the challenges, it gives the Virgin Islanders the right in its political maturation to be able to have that vote. And I think that is extremely important.

I think any changes to a constitution, no matter how good they are at the congressional level, are not consistent with the self-governance and we have the right, and you have given us the authority, to put forth. I think ultimately the people will reject the constitution, and that is my belief. But I think we have a right to at least have that vote and make that determination, as opposed to you making the changes.

Mr. YOUNG. But all three of you all agree then if we don't disapprove it, it goes back to the Virgin Islands. Is that correct?

Governor DEJONGH. That is how I interpret the various statements. But I will let these gentlemen agree or disagree.

Mr. RICHARDS. That is correct.

Mr. YOUNG. Then why are we having a hearing for it.

Mr. RICHARDS. Well, you are having a hearing because the Enabling Act requires you to.

Mr. YOUNG. OK. But what I am saying—you don't object. I happen to think the Justice Department is right, and I don't really agree with the Justice Department. I want you to know that right now. If you don't know my background, you will understand it. But anyway, that is not for you, by the way. That is a different department.

But there are problems, though. And if it is turned down, there won't be those problems. But if it is adopted then, then it goes to the court process. Is that correct?

Mr. RICHARDS. If I may respond.

Mr. YOUNG. Yes.

Mr. RICHARDS. There are some findings in accordance with the Justice Department that I don't agree with myself.

Mr. YOUNG. But that means it is going to go to court.

Mr. RICHARDS. And rightfully so. I don't think there is any constitutional document that has not been challenged, not even the U.S. Constitution.

Mr. YOUNG. OK. When it was written, it wasn't challenged. It is challenged today.

Mr. RICHARDS. And that is because we have a lot of lawyers.

Mr. YOUNG. That is right. That is one thing. If I ever became a dictator, we would have a lot of sport. I can tell you that right now, and I am a trophy hunter. Now having said that, I was advised, for those that might be interested, we are going to have another hearing, Madame Chairman?

Ms. BORDALLO. Yes, we are.

Mr. YOUNG. On another issue, Governor, that you will be interested in, and it is called the Rum Tax. But today, in this hearing today, because it is about the constitution part of it, I will not ask those questions today, but I forewarn all of you about this down the line because I have some interest in this because this is American tax dollars.

But I do again compliment you, and I will be sending you some written questions, and hopefully you will respond to them before we have the next meeting, the next hearing. And on this issue, I want to make sure that the questions the Justice Department addressed, especially when it comes to fisheries and resource jurisdiction—because this is a slippery slope. If you get it, I am going to get it. We have three miles. I would like to have my 200 instead

of 3 miles, like 200 belongs to the Federal Government. I would like to have the state own that. So we are going to make sure everything is consistent as we go down this line.

Again, congratulations. Madame Chairman, I yield back.

Ms. BORDALLO. Thank you very much, Mr. Young. And I thank you. We will look at the other subject matter. I would like now to recognize the representative from the Virgin Islands, The Honorable Donna Christensen.

Mrs. CHRISTENSEN. Thank you, Madame Chair. My first question would come to you also, Assistant Attorney General. Your opinions on the issues involving legal rights being given to individuals defined as native and ancestral Virgin Islands, I think you made that pretty clear. However, does the Administration have an opposition to the acknowledgment and definition of the terms 'native and ancestral Virgin Islanders.'

Mr. CEDARBAUM. Thank you, Congresswoman. I think if those definitions had no legal consequences whatsoever, then we would not find them legally objectionable or inconsistent with Public Law 94-584.

Mrs. CHRISTENSEN. OK. And would you elaborate on the issue of a senator from St. John. I think that would come under the section entitled Potentially Unequal Legislative Districts, as it relates to the one-man, one-vote. Are you saying that the provision that would give St. John its own elected senator is on its face unconstitutional? Because I have always felt that St. John should have its own senator.

Mr. CEDARBAUM. No, Congresswoman. We were not saying that that provision was unconstitutional on its face. We wanted to lay out, though, what we understand to be the relevant constitutional principles for assessing whether a one-person, one-vote problem might arise. And as we explained in our memo, those principles involve basically the weighing of two considerations, how big a discrepancy there is between equality among the different districts, and how important the interests offered by the state government are as to why there should be a district for a particular geographic area like St. John. One would have to balance those and look at all of the relevant facts before coming to any conclusion on whether any particular arrangement would be constitutional or unconstitutional.

Mrs. CHRISTENSEN. OK. Thank you. Thank you for those answers. I have another one, but I am going to try to get some other questions in within my five minutes. I guess I would ask this to the Governor and Senator Richards, but President James, you could answer it if you would like to also because I have a dilemma. The three of you have testified that the document should be remanded to the people of the Virgin Islands as is for a vote. And I respect that the delegates were duly elected to draft the constitution that is before us, and I would be loathe to make any changes just because I didn't agree with something.

But help me to understand why it is not a dereliction of our duty as a Congress if we should send this document that is in violation of the authorizing legislation back to the people. Don't we have an obligation to the people of the Virgin Islands as the only body that can amend it to send them a document that would withstand legal

and constitutional challenge? And would we not be disrespecting the people of the territory in not doing that? That is my dilemma, and I wish you would help me to figure out—I feel I would be disrespecting the people of the territory to send them a document and ask them to come out—you will be asking them to come out and vote on it. And it does not meet constitutional muster. I feel like I would be derelict in my duty, and the Congress would be derelict in its duty.

Governor DEJONGH. Well, Delegate Christensen, the dilemma that you are dealing with is the very same dilemma that I dealt with when I was initially given the proposed constitution and why I did not immediately send it to the President, because I did not feel when I received it that it, in fact, represented what was required by public law, in addition to all of the issues having to do with constitutionality. It took a court decision, which never dealt with the issues of my concern, but had to deal with process—and I decided that it was better to put that process forward, allow the constitution to go through because I look at it not just with respect to this event or this Congress. But it is a political maturation process that started from the 1917 to the first elected Governor to the first elected delegate, and it is a process that we have to respect.

On the day that I decided to send the document to the President, the President transmitted it to the Congress, and you are now considering it. I do believe that the people of the Virgin Islands have a right to determine whether, in fact, they accept it and have the challenges that will come, or they reject it on its face. I think for us not to do that would, in fact, be disrespectful to our constituents as voters because I think they have a right since they did elect the delegates to make that determination.

It is a conflicting position, and it is a conflicting position that I initially had earlier in the middle of 2009 when I initially did not send the document. But having reached to this point, I do believe that for the process to go forward, for us not to abdicate the rights of self-governance and look at Congress to write our rules and our regulations, we need for it to go forward based on what the delegates of the constitutional convention put forth and let the determination lie with the process for rendering the results in the vote.

Mrs. CHRISTENSEN. Did anyone else want to answer that question?

Mr. RICHARDS. I wish also to respond. Let me say from the onset that I am not in agreement that it is violation of the Enabling Act. That is pointed out by the report done by the Department of Justice Assistant Attorney General that was submitted when the document transmitted. One of the things that we ought to keep in mind is that the Enabling Act is some 34 years old, and a lot has transpired in the Virgin Islands since the Enabling Act.

As a matter, our Congressman Young that just left, when he chaired a committee on May 17 of 2000 that I testified before, with then Governor Turnbull, Senator-present Richards, Senator Redfield in his capacity as the state chair for the Republican Party, myself in my capacity as state chair for the Independent Citizens Movement, that piece of legislation was an attempt to clarify some of the requirements of the Enabling Act. And because we failed to be able to recognize where we are today and what was enacted in

1974 and its applicability, I think we find ourselves in this particular conundrum.

More importantly, I think that the resident votes of any district, any place, any city, any state, are the persons that have equal importance than any one of us that are elected leaders. None of us would be elected to a position without the resident voters. And if the resident voters have dictated through their selection of individuals on a constitutional convention to draft a document, then I think that these elected voters should be intelligent enough to make a determination on something that they can accept or do not accept. And that is basically my fundamental concern with the issue, that if anyone of us, whether we are elected as the Governor, Lieutenant Governor, or Senate Presidents or members of the constitutional convention, who in some instances were being referred to as a minority or different opinion members of the constitutional convention—how many times does a person have a bite of the apple? That is like me being voting for something I did not vote in the majority past, and then my job is to go about, campaign, and ask it not to become law, though a majority of individuals—I mean, what is democracy supposed to mean to us? And I think that is basically my concern.

Ms. BORDALLO. Is that it?

Mr. JAMES. I would not say that would be a dereliction of your duty to send it back the way it is. We were elected by the people of the Virgin Islands to bring this product to where it is today, and it was not just by anybody. It was done by professionals, Lieutenant Governors, Governors, politicians, professors. You had attorneys. You had a district court judge. So they were all elected, and I must say that it was a cross-section of individuals that were elected. And this proposed was actually proposed, as I indicated, by two-thirds vote. And it is a process. So it is the process of Congress if you will choose to send it back. That is one of the processes that you can use without doing any modifications. And we will be more than happy to have the people of the Virgin Islands continuing with their rights to fulfill and vote on it and make it pass, or if they feel not to, then it will fail.

Governor DEJONGH. Delegate Christensen, could I also add that even if it is challenged legally, we have a sophisticated judiciary system. We have the superior court. We have the supreme court now as appellate, and we also have the district court. So even to the extent that there is a challenge, we can feel comfortable that the process begins in the court system and in the judicial system that is comprised of local, and where local precedent is established. And you go through from superior to the supreme to the district.

Mrs. CHRISTENSEN. My times is up.

Ms. BORDALLO. Yes. I thank the gentlelady from the Virgin Islands. And now I would like to recognize the representative from Puerto Rico, Mr. Pierluisi.

Mr. PIERLUISI. Thank you, Chairwoman Bordallo. Thank you. Thank you all for appearing. As you know, I represent Puerto Rico, the neighboring islands of Puerto Rico. And I have to say that I feel torn, torn because on the one hand I believe deeply in the principle of self-government. The U.S. citizens of the Virgin Islands, just like their fellow Americans in the States and sister territories, should

aspire to be governed by laws that reflect their own principles and beliefs, not by laws that are established by others. So I am all for you.

The fact is, I represent a territory, and an unincorporated territory that has its own constitution since 1952. And that constitution was approved by this Congress. The constitution on its face doesn't say that Puerto Rico is an unincorporated territory. The constitution doesn't say on its face that Puerto Rico is subject to the territory clause of the United States constitution, yet the courts in the U.S., U.S. courts, have consistently so ruled since 1952 until the present time.

So even though I know that this exercise of self-government is limited by its very nature because of the status that we both hold, the U.S. Virgin Islands and Puerto Rico, I commend you. You should have your own constitution. And I cannot wait for the day that this Congress approves your constitution.

Having said all of that, I am torn because I guess now the fact that I am a former attorney general comes in the way. It troubles me that knowing that the Justice Department, the U.S. Justice Department, is expressing some reservations, that I am going to simply sitting here as a Member of Congress let the clock run, wait 60 days, and simply allow this to go to the Virgin Islands for a vote, and ignore the fact that I am being told that there are some issues.

So I wonder whether—and I raise this before you as well as before my colleagues—whether at the very least we could issue a resolution expressing the sense of Congress that there could be some provisions in this constitution that could be subject to legal challenge, but that in deference to the right of self-government of the people of the Virgin Islands, we are returning it to the people of the Virgin Islands for a vote. At the very least, we should do our duty. We should express what we might collectively believe in. That is my take on this.

Again, I am all for you. I want this to happen. But something in me tells me you cannot ignore that there are some flaws and that you should at least try to express that when you do what you are called to do on this occasion. So that is all I will say.

On the rum issues, by the way, you know my position, Governor. This is not the time or occasion. I hope we get a hearing somewhere where we can try to find a just solution. I have hated every minute of this controversy, and I hope we find a just solution to it. But this is not the place or the time to go into that.

Those are my feelings, my views. If any one of you wants to comment on them, I will be glad to listen.

Mr. RICHARDS. If I could just say quickly, for the record—and I appreciate the position that you find yourself in, and a good position that you may also place yourself in is the former position that was held by Juan Melecio when he served as a state electoral commission head. And the last privacito that you all had in the late 1990, early 1980s—and that position is a manager of the process. And I sincerely believe that somebody—the concerns and issues raised by the Justice Department are issues that should be allowed to be brought before a court if the document is adopted. There is no one in this process more important to me than the voters.

None of us, whether you are a Member of Congress, you are a member of the Virgin Islands or you are the Governor—and I think that irrespective of some of the concerns that we ought to allow—although we are responsible to lead, we ought to allow these persons that began this process to have the opportunity to vote on this document. And I understand the issue as an attorney. And no pun was intended earlier in regards to your position.

Governor DEJONGH. If I could address both issues. The first issue is one of if an issue is going to come up at the next committee that goes from Alaska to Puerto Rico, we are going to have a very long conversation. And as you well know, the meeting that I initiated to which you went to in Puerto Rico with our delegate, we are still waiting for an answer with respect to a question that we asked of the Puerto Rico delegation to get back to us on, where it is has not. And at the committee hearing, we will have a chance, I assume, to go into greater detail on that issue.

With respect to having a sense of the committee with respect to the items in the constitution that the Justice Department has brought up of issues of concern, that is clearly in my opinion within your right to do, to give a sense. That is something that you should consider. Irrespective of that, I still believe, however, that the constitution, proposed and draft constitution sent up, should in fact still go back to the people of the Virgin Islands to be consistent to a process that has taken us to this point. And if it takes us to a sixth constitutional convention, then there will be a better constitutional convention, and each one will deal with the issues until we get there.

Ms. BORDALLO. I want to thank the gentleman from Puerto Rico. And now the gentlelady from the Virgin Islands has a couple more questions before we go into our second panel.

Mrs. CHRISTENSEN. True. And I will try to be very brief. Thank you, Madame Chair. To the assistant attorney general. The section in the constitution that provides for the government to have the power to manage, control, and develop the natural and marine resources comprising of the submerged lands, inlets, and keys is very similar to a bill that I have introduced in several congresses to expand the territorial submerged lands. But the committee has never taken it up because the support was just not there.

Would you please explain the problems you see in this provision, and let me know if it rises to the level of violating the dictates of the authorizing legislation? Or is it just something that is of concern, but could be worked out?

Mr. CEDARBAUM. Thank you, Congresswoman. I think our fundamental concern is that article 12, section 2, which is the section, as you indicated, that addresses territorial waters and marine resources, is unclear. And to the extent that it might be read as asserting sovereignty of the territorial government as against the sovereignty of the United States, that would be troubling and should be changed.

At the same time, as you mentioned, you may have a bill before Congress—I am not familiar with that particular piece of legislation. But as we indicated in our memo, in line with that first fundamental point, these issues are all subject to Congress's control. So if Congress wants to convey to the Virgin Islands certain rights

to control some of these marine resources, that is within Congress's power, and it is free to do so.

Mrs. CHRISTENSEN. Thank you. Well, with respect to, for example, the needing to clarify that issue, I wanted to ask Senator Richards, as the only representative from the legislature at this panel, if the local legislature would ever consider reconvening the convention to consider the changes suggested by the Justice Department before the final document is sent to the people for vote.

Mr. RICHARDS. I only smile because you put me in a predicament now. The predicament is that I didn't vote for the local legislature to conduct this Fifth Constitutional Convention process because I sincerely believe that it is difficult to write a document of what you want to do, where you want to go, if you don't know basically who you are and what you are about. And that is what the political status is about. And so I was one of two that dissented in voting to convene a Fifth Constitutional Convention.

I believe if, in fact, this is not adopted and we find ourselves back to square one, and if the Congress makes any changes to the document that is before us, it is no different than us having voted on the revised Organic Act because now it becomes a congressional document. And so I really can't say what—

Mrs. CHRISTENSEN. Well, I am saying if—

Mr. RICHARDS. I can't say what the legislature will do. As you notice from my sign, I am the Minority Leader. So I can't speak what the majority of the members would. I really can't. I really can't tell you.

Mrs. CHRISTENSEN. Let me just ask one other question that anybody might want to answer then. Why do you think that the authorizing legislation provided for the U.S. Congress to be able to amend the document before sending it back to the people?

Mr. RICHARDS. Well, I can answer that, at least in my opinion, in one word, because we are still a possession.

Mrs. CHRISTENSEN. And we are. That is a fact.

Mr. RICHARDS. And they want to maintain jurisdiction over the piece of property that they bought in 1917.

Governor DEJONGH. But that was the enabling legislation.

Mrs. CHRISTENSEN. Yes.

Governor DEJONGH. That does not mean that this Congress and this body needs to continue that. You can, in fact, send it back and continue the maturation process that is necessary with respect to reaching the final determination of a constitution written by Virgin Islanders.

Mrs. CHRISTENSEN. Right. We do have the alternatives before us to send it back, or to amend it or, in fact, to reject it. And even if this body on this side of the Capitol were to amend it, it is still very possible that it would come back to the territory in its current form. Thank you, Madame Chair.

Ms. BORDALLO. I thank the gentlelady from the Virgin Islands. And again I want to thank you very much, Governor, for coming over to Washington for this hearing.

Governor DEJONGH. Thank you.

Ms. BORDALLO. And to thank you representative from the Department of Justice, the senator, and of course—

Mr. CEDARBAUM. Thank you.

Ms. BORDALLO.—my fellow colleague of many years ago, Lieutenant Governor—

Mr. JAMES. Thank you.

Ms. BORDALLO.—and also the president of the constitution. And I also want to remind you that the Subcommittee may have additional questions for you. And if you could, we would like to ask you to respond to these in writing.

Governor DEJONGH. Of course. Thank you very much.

Ms. BORDALLO. And now the witnesses for the next panel are all comprised of five delegates to the Fifth Constitutional Convention. We welcome on the second panel—we would like to recognize Mr. Adelbert M. Bryan, Mr. Gerard Marlow Emanuel, Dr. Lois Hassell-Habtes, Dr. Eugene A. Petersen, and Mr. Douglas Brady. Please be seated.

[Pause]

Ms. BORDALLO. Lady and gentlemen, thank you very much for joining us today. And I will now recognize you each for five minutes, in the order that you are seated. Again, please be assured that your full statement will be entered into the official record, and we would appreciate your summation of the key points. The red timing light is before you, and we may not be as—what is the word I want to use—liberal on the second panel. The Governor and a few of the elected officials did go over time, but please be considerate because your full statement will go on the record.

So again, Mr. Bryan, we will begin with you. Please proceed.

**STATEMENT OF ADELBERT M. BRYAN, DELEGATE,
FIFTH CONSTITUTIONAL CONVENTION**

Mr. BRYAN. Good afternoon. I have a question, please. Good afternoon, Chair Bordallo. I have a question. You mentioned earlier that the elected individuals would have five minutes also, right?

Ms. BORDALLO. Yes.

Mr. BRYAN. So myself, Mr. Emanuel, and Ms. Habtes are elected members of the convention.

Ms. BORDALLO. Oh, well, if you are an elected official, then you go ahead.

Mr. BRYAN. Thank you very much.

Ms. BORDALLO. Please try to keep it concise. Thank you.

Mr. BRYAN. OK. Thank you very much. Again, good afternoon, Madame Chair Bordallo. I am Adelbert M. Bryan, at-large delegate of the Fifth Constitutional Convention, and I represent the majority population of my native land. I was born and raised in the Virgin Islands.

I would like to begin my testimony with historical facts, national record, and quotations. “We hold these truths to be self-evident; that all men are created equal; that they are endowed by their creator with inherent and inalienable rights,” end of quote.

Quote, “Nothing is more certainly written in the book of fate, than that these people are to be free; nor is it less certain that the two races, equally free, cannot live in the same government. Nature, habit, and opinion have drawn indelible lines of distinction between them. It is still in our power to direct the process of emancipation and deportation, peaceably, and in such slow degree, as that the evil will wear off insensibly, and their place be, on an

equal basis, filled up by free white laborers. If, on the contrary, it is left to force itself, on human nature must shudder at the prospect held up," end of quote.

The actual words of Thomas Jefferson, the man who has been called the author of America, the former quote being the Declaration of Independence before it being edited by the Congress. These words strike at the very foundation of the governmental process of the Fifth Constitutional Convention of the Virgin Islands of the United States of America.

In 1917, the United States purchased the discovery rights of the Danish West Indies from the crown of Denmark. Then as is now, the preponderance of the islands' population is African descendants. At the time of the transaction, the international laws in effect between European nations, which included the United States as enshrined in Article One, Section Eight of the U.S. Constitution were called the Laws of Nations. Under the heading of the Rights of Property, the Laws of Nations denies sovereignty to the native occupiers of their land. It was and is a code against nonwhites like our ancestors, who were at the time free people, human beings, since July 3, 1848, 1863, 1865, and thereafter the 13th Amendment to the U.S. Constitution.

The U.S. Congress took control of the islands with the official title of Unincorporated Territory of the United States of America, a designation the Supreme Court defined as an appurtenance, a possession of, but not a part of the United States. These are not fertile circumstances for the development of self-government. As the 93-year history of the Virgin Islands painfully indicates, autonomy is so closely regulated, it defies definition.

Quote, "I believe this observation will be found generally true, that no two people are so exactly alike in their situation or circumstances as to admit the exercise of the same government with equal benefit, that a system must be suited to the habits and genius of the people it is to govern, and must grow out of them," end of quote. Spoken by Mr. Charles Pinckney, delegate from South Carolina in the 1787 convention on Monday, May 14th, in Philadelphia, Pennsylvania. Mr. Pinckney read from a prepared speech to his fellow delegates, offering his vision for the new nation. "Conquest or superiority," end of quote, he said, "among other powers is not or ought not to ever be the direct object of a republican system," end of quote.

As was the case when Mr. Thomas Jefferson wrote of the inherent and inalienable rights, Mr. Pinckney would not have imagined an unincorporated population of African descendants. Yet this is the crucible of the issue of self-government in the Virgin Islands of the United States. The U.S. Constitution still embraces the Laws of Nation that condemns sovereignty to people of color, a Constitution that is currently defended by an African-American President.

If not now, when will the time be right for the majority population of the Virgin Islands to design a government suited to their habits and genius. An appurtenance by its very nature is temporary. Ninety-three years should be more sufficient time for the Congress to deem native Virgin Islanders to draft an identity for their key society.

It is a legitimate government process for an African-descended population to choose its government, as it was for an African-American to win the presidency. Both are lawful ambitions that wouldn't raise an eyebrow if not for raise. Should the Virgin Islands people apologize for aspiring to a government more suited for their genius?

The proposed Fifth Constitution is not in contravention to the United States Constitution. While its style may be different, the spirit of liberty is identical. The intent is to accommodate Virgin Islanders within the framework of the Federal laws. Less than 20 percent of the Virgin Islands population is other than African descendants. Most of the minority populations are white, and they are influential and resourceful. Should their dissenting vote on the document be anything more than a minority protest? Is the African-American led nation still of the psyche of Thomas Jefferson? Do we today believe that two races equally free cannot live in the same government? But we do agree with the third President that it is in our interest and your powers to direct the process.

In the spirit of moral human rights, dignity, and fair play, we urge this body to accept the proposed constitution before you as a best effort at compromise without capitulation. The people of the Virgin Islands have called for a more compatible government better suited to our aspirations of growth and development.

I would thank you for your time.

[The prepared statement of Mr. Bryan follows:]

Statement of Adelbert M. "Bert" Bryan, Delegate, 5th Constitutional Convention, St. Croix, Virgin Islands of the United States of America

"We hold these truths to be self evident; that all men are created equal; that they are endowed by their creator with inherent and inalienable rights;"

"Nothing is more certainly written in the book of fate, than that these people are to be free; nor is it less certain that the two races, equally free, cannot live in the same government. Nature, habit, opinion have drawn indelible lines of distinction between them. It is still in our power to direct the process of emancipation and deportation, peaceably, and in such degree, as that the evil will wear off insensibly, and their place be, on an equal basis, filled up by free white laborers. If, on the contrary, it is left to force itself, on human nature must shudder at the prospect held up."

The actual words of the man who has been called the Author of America, as quoted in the "Autobiography of Thomas Jefferson". The former quote being the Declaration of Independence before being edited by the Congress.

These words strike at the very foundation of the governmental purpose of the Fifth Constitutional Convention of the Virgin Islands of the United States of America.

In 1917, the United States of America purchased the discovery rights of the Danish West Indies from the Crown of Denmark. Then, as now, the preponderance of the islands population is African descendants. At the time of the transaction the international laws in effect between European nations, which included the United States, as enshrined in Article One, Section Eight of the Constitution were called the Laws of Nations. Under the heading of the Rights of Property, the Laws of Nations denies sovereignty to the native occupiers of land. It was, and is, a code against nonwhites like our ancestors; who were at the time free people "human beings" since July 3, 1848, 1863, 1865 and thereafter the Thirteenth Amendment of the U.S. Constitution.

The United States Congress took control of the islands with the official title of the Unincorporated Territory of the Virgin Islands of the United States. A designation the Supreme Court defined as an appurtenance, a possession of, but not a part of the United States of America.

These are not fertile circumstances for the development of self-government. As the ninety-three year history of the Virgin Islands of the United States of America painfully indicates, autonomy is so closely regulated it defies definition.

“I believe this observation will be found generally true: — that no two people are so exactly alike in their situation or circumstances as to admit the exercise of the same Government with equal benefit: that a system must be suited to the habits and genius of the people it is to govern, and must grow out of them.”

Spoken by Mr. Charles Pinckney, Delegate from South Carolina to the 1787 Convention on Monday, May 14th, in Philadelphia, Pennsylvania. Mr. Pinckney read from a prepared speech to his fellow delegates, offering his vision for the new nation. “Conquest or superiority”, he said “among other powers is not or ought not ever to be the object of republican systems”.

As was the case when Mr. Thomas Jefferson wrote of the inherent and inalienable rights, Mr. Pinckney would not have imagined an unincorporated Territory populated by African descendants. Yet, this is the crucible of the issue of self-government in the Virgin Islands of the United States of America.

The Constitution still embraces the laws of Nations that condemns sovereignty for people of color. A Constitution that is currently defended by an African-American President.

If not now, when will the time be right for the majority population of the Virgin Islands of the United States of America to design a government suited to their habits and genius? An appurtenance by its very nature is temporary. Ninety-three years should be more than sufficient time for the Congress to deem Virgin Islanders fit to craft an identity for their tiny society.

It is as legitimate a governmental purpose for an African descended population to choose its government, as it was for an African-American to win the Presidency. Both are lawful ambitions that wouldn't raise an eyebrow if not for race. Should the Virgin Islands apologize for aspiring to a government more suited to their genius?

The Fifth Constitutional Convention draft is not in contravention to the U.S. Constitution. While its style may be different, the spirit of liberty is identical. The intent is to accommodate Virgin Islanders within the framework of Federal laws.

Less than twenty percent of the Virgin Islands population is other than African-American descendants. Most of the minority population are whites. Not all whites are in opposition, but too many are, and they are influential and resourceful. Should their dissenting vote on the document be anything more than a minority protest? Is the African-American led nation still of the psyche of Thomas Jefferson? Do we today believe the two races equally free, cannot live in the same government? But we do agree with the Third President that it is in your power to direct the process.

In the spirit of enlightenment and fairplay, we urge this body to accept the Draft Constitution before you as the Fifth Constitutional Convention's best effort at compromise without capitulation. The people of the Virgin Islands have called for a more compatible government, better suited to their aspirations of growth and development.

Ms. BORDALLO. I thank you very much, Mr. Bryan, for your testimony. And now I would like to recognize Mr. Emanuel for five minutes.

**STATEMENT OF GERARD MARLOW EMANUEL, DELEGATE,
FIFTH CONSTITUTIONAL CONVENTION**

Mr. EMANUEL. Madame Chair and other distinguished members of the Subcommittee, my name is Gerard Emanuel. I am a delegate to the Fifth Constitutional Convention of the Virgin Islands. I am honored to have this opportunity to appear before you on the proposed constitution of the United States Virgin Islands. Today is exactly two weeks before the 93rd anniversary of the sale of the Danish West Indies to the United States of America, at which time those islands became an unincorporated territory of the U.S.

Our proposed constitution on the whole should therefore be considered within the context of the unique position of the Virgin Islands as an unincorporated territory of the U.S., similar to the status of our sister territories. In advance of congressional consideration of the proposed constitution, the U.S. Justice Department was directed by President Barack Obama to provide its view on the

proposed document. My testimony is intended to address several issues which were raised in the Justice Department review.

The first issue relates to the recognition of United States sovereignty. I wish to emphasize that the work of the Fifth Constitutional Convention of the Virgin Islands was not intended to suggest any alteration in the unincorporated territorial status. The proposed constitution before this body fully recognizes the sovereignty of the United States over the territory through its acknowledgment of the unincorporated territorial status.

Former Chair of the United States Energy and Natural Resources Committee Lowell Weicker, during congressional review of the 1980 proposed Virgin Islands constitution observed that the phrase "unincorporated territory," was not an implicit but an explicit statement of the sovereignty of the United States. Such recognition is also confirmed in the 2010 Justice Department memorandum, which states 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.

Madame Chair, another issue raised in the Justice Department memorandum was the provisions related to the recognition of ancestral native Virgin Islanders and native Virgin Islanders. The rationale for the inclusion of these sections should be seen within the context of the unique socio-cultural and political history of the territory.

Prior to the transfer of jurisdiction from Denmark to the United States by the treaty accession in 1917, the people of the Danish West Indies, who are largely of African descent, were enslaved for over 200 years with all of the attendant abuses. On July 3, 1848, the Danish government was forced to ratify the freedom of the enslaved ancestral Virgin Islanders due to a meticulously planned revolt. By this act, the newly freed Africans now considered themselves as full citizens, equal to the Europeans for whom they still worked.

However, they were quickly disillusioned by the labor act of January 1849, a euphemism for a code of decrees that virtually placed them back into slave-like conditions once again. This left them no money to invest or advance themselves economically, socially, or politically. Our ancestors resisted this recapitulation by Denmark for 30 years, which culminated in a laborers' revolt in 1878 known as the Fireburn.

After this, our ancestors believed they would be fully able to participate as citizens in their homeland. But once again, they were disillusioned because the Danish colonial laws provided prohibitive income and property ownership requirements that precluded the laborers from voting and running for office. Therefore, whether during or after chattel slavery, whenever our ancestors sought to effectuate social and political reform, they had to do so violently because there were no legal mechanisms available to them to obtain their civil and human rights.

Sadly, Madame Chair, these discriminatory laws remained in effect for the first 20 years of American rule. The 1917 treaty accession made provisions for Danish citizens in the territory to either

retain their citizenship or to become United States citizens. No such choice was given to the majority native population. Their rights were to be determined by the U.S. Congress.

For 10 years, they were devoid of citizenship. Accordingly, the 1927 and 1940 Citizenship and Nationality Acts defined them as natives who are not citizens or subjects of any foreign country. The 2009 edition of *Caribbean Perspectives*, a journal published by the University of the Virgin Islands, pointed out, "Quite apart from the mandate to create or recreate structures of government through a local constitution to replace the United States Revised Organic Act of 1954 was the task of defining/redefining a political and cultural identity amid changing demographics."

The present Fifth Constitutional Convention has approved the proposed constitution before you within this historical framework. The basis for the recognition of the ancestral native and native Virgin Islander lies in the treaty accession and in relevant Federal statutes. This acknowledgment is intended for the protection of the declining native population and the preservation of the disappearing culture and traditions of a people.

The historical context and the need for effective reparative action represent the compelling state interest we strongly feel justifies the relevant provisions.

In conclusion, Madame Chair, the annex to this statement, which I am attaching for the record, contains the historical basis for a compelling state interest to justify the provisions for differential treatment of ancestral native and native Virgin Islanders. I wish to thank your Subcommittee for this important opportunity to provide testimony on the proposed constitution of the United States Virgin Islands. Thank you, Madame Chair.

[The prepared statement of Mr. Emanuel follows:]

Statement of Gerard M. Emanuel, Delegate to the Fifth Constitutional Convention of the United States Virgin Islands

Madam Chair and other distinguished members of the Subcommittee,
My name is Gerard Emanuel. I am a delegate to the Fifth Constitutional Convention of the Virgin Islands. I am honored to have this opportunity to appear before you on the proposed constitution of the U.S. Virgin Islands.

Our proposed constitution, on the whole, should be considered within the context of the unique position of the Virgin Islands as an unincorporated territory of the United States, similar to the status of our sister territories in American Samoa and Guam, and the commonwealths of the Northern Mariana Islands and Puerto Rico, respectively. While the nature of the constitutional arrangements in each of these territories varies, the commonalities which we all share are the applicability of the Territorial Clause of the United States Constitution and our status of un-incorporation.

In advance of Congressional consideration of the proposed constitution, the U.S. Justice Department was directed by President Barak Obama to provide its views on the proposed document. My testimony is intended to address several issues which were raised in the Justice Department review.

The first issue relates to the recognition of United States sovereignty. I wish to emphasize that the work of the Fifth Constitutional Convention of the Virgin Islands was not intended to suggest any alteration in the unincorporated territorial status, but rather to determine the parameters of the prevailing status. This has come some thirty years since the Virgin Islands last attempted to write a constitution. The proposed constitution before this body fully recognizes the sovereignty of the United States over the territory through its acknowledgement of the unincorporated territorial status.

Former Chair of the United States Senate Energy and Natural Resources Committee Lowell Weicker, during Congressional review of the 1980 proposed Virgin Islands constitution, observed that the phrase "unincorporated territory" was "an

explicit statement of the sovereignty of the United States.” Such recognition is confirmed in the 2010 Justice Department memorandum which states 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.”

Madam Chairman, another issue raised in the Justice Department memorandum was the provisions related to the recognition of ancestral Virgin Islanders and native Virgin Islanders. The rationale for the inclusion of these sections should be seen in the context of the unique socio-cultural and political history of the territory.

Prior to the transfer of jurisdiction from Denmark to the United States by the Treaty of Cession in 1917, the people of the Danish West Indies, who were largely of African descent, were enslaved for over two hundred years with all of the attendant abuses.

On July 3, 1848, the Danish government was forced to ratify the freedom of the enslaved African Ancestral Virgin Islanders due to a meticulously planned, non-violent revolt by the enslaved. By this act, the newly freed Africans now considered themselves as full citizens equal to the Europeans for whom they still worked. However they were quickly disillusioned by the Labor Act of January 1849, a euphemism for a code of decrees that again virtually placed them into slave-like conditions. They were compensated for their labor, but were charged excessively for all their basic needs and at the end of the day had no money to invest or advance themselves economically, socially or politically.

Our ancestors resisted this recapitulation by Denmark for thirty years, which culminated in a laborers’ revolt in 1878 known as the “Firebun” staged in order to secure a living wage. After this, our ancestors believed they would be able to fully participate as citizens in their homeland, but were once again disillusioned. In 1852, the Danish Colonial Laws were enacted and subsequently revised in 1863 and 1906. These laws established the guidelines for only limited native participation in the political process in the Danish colony.

The irrefutable impact of these laws on the majority of the native population was to continue to prevent their legitimate participation in the political process, and to deny them citizenship. Specifically, there were prohibitive income and property ownership requirements that precluded the laborers from voting and running for office. Therefore, whether during or after chattel slavery, whenever our ancestors sought to effectuate social and political reform, they had to do so violently, because there were no legal mechanisms available to them to attain their civil and human rights. Sadly, these discriminatory laws remained in effect for the first 20 years of American rule.

The 1917 Treaty of Cession made provisions for Danish citizens in the territory to either retain their citizenship, or to become United States citizens. No such choice was given to the majority native population. Their rights were to be determined by the United States Congress. The natives did not become U.S. citizens immediately, and for ten years they were devoid of citizenship. Accordingly, the 1927 and 1940 U.S. Citizenship and Nationality Acts defined them as “natives who are not citizens or subjects of any foreign country.” The territory was governed by the United States Navy from the transfer in 1917 until 1931 when civilian rule was instituted by way of governors appointed by Washington.

By the 1960s, the territory experienced an unprecedented growth in population, primarily through immigration to fill labor needs in the developing tourism and industrial sectors. Reliable estimates of new residents totaled 34,000 between 1960—1970 alone, exceeding the entire 1960 population of the territory. It was noted in the 2009 journal “Caribbean Perspectives” a publication of the University of the Virgin Islands that:

“The temporary worker system which had been legislated by the U.S. Congress pursuant to U.S. immigration laws facilitated the movement of mainly African descendants from other parts of the Caribbean to the U.S. Virgin Islands to meet growing labour needs. Concerned with the projected financial impact of the extension of public services to the new residents, the U.S. Virgin Islands legislature sought to use its local authority to regulate access to education, housing and other areas. This was later overturned by the U.S. courts and applicability of U.S. equal protection laws. A specific U.S. immigration measure enacted in 1981 also provided for a process of achieving permanent residency status in the territory, and ultimately U.S. citizenship.”¹

¹ Caribbean Perspectives, A Journal of the Eastern Caribbean Center of the University of the Virgin Islands, January, 2009.

It is within this historical context that four constitutional conventions were held in the U.S. Virgin Islands between 1964 and 1980. As the same University of the Virgin Islands article pointed out:

“Quite apart from the mandate to create/re-create structures of government through a local constitution to replace the U.S. Revised Organic Act of 1954 was the task of defining/re-defining a political and cultural identity amid changing demographics.”²

The present Fifth Constitutional Convention has approved the proposed constitution before you within this historical framework. The provisions of recognition of native Virgin Islanders were included in the text in the wake of the continued decline of the native population, and the gradual disappearance of Virgin Islands culture and traditions. Similar provisions appear in laws and agreements protecting native populations in other United States territories.

The basis for the recognition of the ancestral and native Virgin Islander in the proposed constitution lies in the Treaty of Cession and in relevant federal statutes, and is intended for the protection and preservation of the culture and traditions of a people. The historical context, and the need for effective reparative action, represents the compelling state interest we strongly feel justifies the relevant provisions.

Conclusion

Madam Chair, the Annex to this statement, which I am attaching for the record, contains the historical basis for a compelling state interest to justify the provisions for differential treatment for ancestral and native Virgin Islanders. I wish to thank this Subcommittee for this important opportunity to provide testimony on the proposed constitution of the U.S. Virgin Islands.

Annex

Historical Background Utilized As Support for Differential Treatment of Ancestral and Native Virgin Islanders

Africans who are the ancestors of Ancestral Natives and Natives, were enslaved for over two hundred years in the Virgin Islands. During this time they were subjected to multiple political, social, cultural, religious and economic abuses and were denied their inalienable human rights.

- After slavery officially ended on July 3, 1848, each planter was compensated at \$50.00 per ex-slave, while the ex-slaves received nothing for hundreds of years of forced labor.¹
- A Labor Act of January 26, 1849 was instituted by the planters to keep the newly freed laborers in slave-like conditions. This lasted for 30 years until the “Firebun” of 1878 forced its demise.²
- In the late 1800’s “...judges, prison officials, planters and police banded together against the laborer to capitalize on his labor. The judge would imprison a laborer on the basis of a complaint from the employer. Once in jail, as punishment, the prisoner would be sentenced to work on one of the estates without compensation. The prison officials and police would be responsible for enforcing the judge’s decree.”³
- The Colonial Council on St. Croix passed laws “...in an attempt to control the laborers and to try to revert the economic and social conditions of the laborer to pre-emancipation and pre-labor riot days.”⁴
- Two of the above laws were 1) life imprisonment for stealing sugar cane; and 2) imprisonment for debt.
- When land was provided to the laborers, the worst land was sold to those who wanted to farm. For example, agricultural depleted estates that were a financial loss and which the government was anxious to dispose of, were sold to the laborers.⁵
- Steam Ship Operators paid female coal workers worthless silver coins. In 1892, Queen Coziah had to lead a protest to stop this illegal discriminatory practice against the African female laborers.⁶
- Due to hard economic times in the late 1800’s and early 1900’s laborers were forced to migrate to other areas in the region such as Panama to make a living where they were paid slave-like wages. “Meanwhile, all the economic benefits and the white collar jobs were reserved for white Americans.”⁷

²ibid

- Many Virgin Islanders lost their lives in Panama from malaria and job related accidents.⁸
- A 1902 Commission observed that Denmark spent "...too much on government officials and soldiers and not enough on schools and hospitals...More attention should be paid to agriculture."⁹
- The planters were assisted but not the laborers. (ibid.)
- Several homesteading attempts were instituted; however, the majority of the best agricultural land was used for growing sugar cane, and thus the island of St. Croix was retained as virtually a mono-economy with little if any economic diversification that could have benefited the laborers, many of whom were experiencing starvation.(ibid. p. 224)
- From the end of slavery until 1936, most laborers were prevented from voting or running for any elected office due to the lack of emphasis on proper education as noted by a Danish Commission in 1902, and restrictive income and land qualifications imposed by Colonial Laws from 1852 up to 1906. These remained in effect for the first 19 years of U.S. rule of the Virgin Islands.
- In 1917 only 5.5% of the population could vote. The vast majority of the eligible voters were conservative white male landowners.) The majority of those deemed ineligible were natives.¹⁰
- For 88 years after slavery, the majority of native Virgin Islanders were disenfranchised. Natives have only been enfranchised for 73 years, and have only had the right to elect a governor for 38 years. (See 1936 Organic Act, C. 699, 49 Stat. 1807, & the 1968 Elective governor's Act, PL 90-496.)
- In the Treaty of Cession between Denmark and the United States, no provisions were made to redress the long history of injustices and discriminatory practices perpetrated on the natives, which occurred under Danish rule. (39 Stat. 1706)
- Preferential treatment was specifically accorded to the Danish Citizens in the treaty. Only Congress was given the authority to determine the civil rights and political status for the majority of the native population who had no citizenship status whatsoever. Natives were not given any rights to choose their status or civil rights. (ARTICLE VI of the treaty.)
- The Virgin Islands was made an unincorporated territory of the U.S. they were owned by, but were not fully a part of the U.S. Natives were not made full U.S. citizens. Only fundamental protections of the U.S. Constitution were extended to them. Only Congress could determine what additional provisions of the U.S. constitution would apply. This was totally unlike the pattern of political development used for the mainly white residents in other U.S. territories before the Spanish American War. (See Boyer pp. 88-104.)
- It took Congress ten years to provide a limited version of U.S. citizenship by statute to V.I. natives. During that ten year period, natives were treated in a subhuman fashion and were not accorded the full protections or privileges of the U.S. Constitution. 44 Stat. 1234 in 1927 and 8 USC., Sec. 1406 in 1940.
- Up until today Virgin Islanders are prevented from obtaining the full protections and rights in the Virgin Islands that all other U.S. citizens living in a state obtain at birth or after being naturalized.
- The U.S. citizenship status of V.I. natives is not guaranteed by the 14th amendment of the U.S. Constitution as it is for all naturalized citizens or for persons born in a state or on a military base.).¹¹
- For the first 10 years of U.S. rule, V.I. natives had no right to trial by jury in civil cases, no locally written constitution, no right to vote for president, no voting or non-voting representatives in either house of Congress, could not elect a Governor, the vast majority could not vote for their local representatives, or run for any office due to income and property ownership restrictions, and they were not properly educated. (See Boyer pp. 109-144; & Willocks ch.'s 11-13, pp. 251-288)
- Native Virgin Islanders were the victims of racist acts by Naval governors, who were specifically chosen from southern states where racist acts towards Blacks were commonplace. The following is a direct quote from one of the governors, namely Sumner Kittelle. "I cannot too strongly urge that there be no change made in the organic law until a full generation has elapsed...and above all the white element must remain in the lead and in supreme control."¹²
- Even other government officials and soldiers performed racist acts during military rule, which lasted for the 14 years after the transfer from Denmark. Any attempts by natives to change their conditions were met with fierce resistance by these U.S. appointed officials.
- The best jobs were reserved for whites or light-skinned persons. Local women felt compelled to copulate with white men to produce lighter-skinned offspring,

who they hoped would not be subjected to the abuses and other atrocities that they faced, (the piel clara syndrome).¹³

- Natives were shot at, or forced to perform normally private acts in public. Native leaders such as David Hamilton Jackson, Randolph Innis, Octavius Granady, Charles Emanuel, James Roberts, August Burnet and Rothschild Francis were maliciously discredited, and vilified by U.S. appointed Governors and other officials for writing about and otherwise trying to stop the innumerable abuses against natives.¹⁴
- The laborers were paid starvation wages such as 20 cents a day immediately prior to the Transfer to U.S. rule. They formed a labor union and staged a six-week strike, which placed tremendous additional hardships on them in order to receive a reasonable wage. They were forced to leave their homes due to lack of money.¹⁵
- Naval Governors had "...military, legislative, civil and judicial powers and the power to abolish the colonial councils.¹⁶ Therefore, under U.S. rule the presidentially appointed Governor was virtually a dictator, and in many instances performed as such to the detriment of natives. The locals had little or no recourse when they took their fight to court. Even there they were discriminated against by the lack of the application of certain parts of the U.S. Constitution to the Virgin Islands, (such as trial by jury in civil cases), and by the racist rulings of judges appointed by the Naval Governors.
- Some judges were elected under Danish rule, but as indicated before not by the majority of the population due to the prohibitive voting restrictions. 17
- The Naval Government resisted providing civil rights to the natives, such as Universal Suffrage, an elected governor, local representation in Washington, a constitution and civil government.¹⁸ Thus natives were denied most of these rights for almost 20 years under U.S. rule, (and some rights are still being withheld by the federal government). This continued the disenfranchisement pattern that had existed under Danish rule from 1848 after slavery had ended. Hispanic natives were denied the right to vote even with the passage of the 1936 Organic Act because of an English literacy requirement.¹⁹
- Before granting Virgin Islanders U.S. citizenship en masse and by statute in the 1920's, Congress even considered and actually attempted "annexing the Virgin Islands to Puerto Rico", without even seeking to obtain the permission of Virgin Islanders. It was only due to massive local protests by natives, that this was not done.²⁰
- Local leaders and Virgin Islanders abroad agitated for civil government, a local constitution and land grants for locals in the early 1920's. However their pleas fell on the deaf ears of both local and national officials.²¹
- Naval governors appointed judges who were assigned to persecute any natives who sought to implement changes for the improvement of government for locals. Governor Philip Williams appointed George Washington Williams in 1924 for this express purpose despite protests from natives.²²
- The Naval government intimidated the local press. Native editors were imprisoned allegedly on charges of libel.²³ *ibid.* p.266
- Government employees were intimidated and some fired for standing up for changes that would help Virgin Islanders.²⁴ *ibid.* p. 267
- Taxation without representation occurred in the 1920's. Sugar imported into the U.S. was taxed, which caused layoffs. Since locals had no representation in either house of congress and could not vote for president, they had little or no viable way of getting their plight heard by federal officials.²⁵ *ibid.* p. 267
- Workers were forced to leave their families and homeland to migrate to other countries such as Panama, Cuba and Puerto Rico to find work. ²⁶*ibid.* p. 269.
- Naval Officials only viewed the problems of natives as economic ones and implemented some economic initiatives. The Native leaders pushed for political reform such as universal suffrage and locally-elected representatives. Their cries were ignored by local officials and those in Washington until almost an entire generation had passed amid discriminatory acts, flagrant and outright violations of the civil rights of natives by the whites under military rule in the 1920's.²⁷ *ibid.* p. 269.
- Many other discriminatory acts, flagrant and outright violations of the civil rights of natives by the whites under military rule in the 1920's.²⁸ *ibid.* pp. 282-287
- At one time in the 1930's, 29 white men owned 80% of St. Croix and controlled the colonial council. They resisted tax increases on their income and property, as well as homestead programs for the local natives.^{29K} *ibid.* p.296
- The federal government instituted homestead programs in the 1930's, which helped locals suffering from unemployment, but according to Willocks,

“...whatever improvement was made in the unemployment situation was offset by increases in the non native population, due to immigration and a high birth rate.”³⁰ *ibid.* p.300 (*Locals had and still have no control over U.S. Immigration laws which are particularly injurious to their exercise of their political right to choose their leaders and approve constitutional or political status documents. When applied to the V.I. due to the small and easily affected population numbers and composition, the result can and has been detrimental to Native Self-Determination attempts such as ratifying two local constitutions in the late 1970's and early 1980's.*)

- Although the Fair Labor Standards Act was passed, an amendment to it in 1941 discriminated unfairly against native laborers because it prevented the favorable wage increase provision from being applicable to the V.I.³¹ *ibid.* p. 300
- Even though the CCC was brought to the V.I. and did provide training and benefits, the educational programs were not “...widened...to include the training which enrollees receive in the United States.”³² *ibid.* p. 303
- St. Croix natives could not get a local 12th grade education until 1935, which was 18 years after being under U.S. rule. This affected their ability to obtain higher education and prepare themselves for assuming positions of leadership.³³ *ibid.* p. 304
- Women were denied the right to vote until 1936 to prevent strengthening the black vote, since women made up the majority of the population.³⁴ *ibid.* p. 309
- Military bases established in the V.I. before World War II, increased racism here. Some military personnel brought their racial attitudes and behavior with them. Many confrontations occurred, and to not offend the white members of the military or lose their business, many local white businesses refused to serve native Blacks.³⁵ *ibid.* p. 317
- Natives originally could not participate in the armed forces. Those who received permission had to volunteer after petitioning to have this privilege. Some Natives died as a result, but all experienced blatant racism in Puerto Rico and in the U.S. Some of them indicated that they were treated and got along better with the German prisoners of wars than they did with the White American servicemen.³⁶ *ibid.* pp. 318-319
- The Legislative Assembly passed a bill into law against discrimination because of the expected increase in tourism and white visitors to the territory beginning in the early 1950's. This was to offset the same kind of increase in racism that had occurred when the military came here during World War II. White business owners opposed the law arguing that “...such a bill would be bad for tourism, because tourists who were accustomed to segregation would be forced into integration. This would chase tourists from the Virgin Islands, which would result in the hotel and resort industry suffering considerable losses.”³⁷ *ibid.* p. 326
- Policies prejudicial to natives and favorable to persons from the U.S. by some appointed Governors even after military rule had ended in 1931 continued, especially under Governor Archie Alexander in the mid 1950's.³⁸ *ibid.* p. 329-330
- Laurence Rockefeller bought 2/3's of St. John to turn it “into a millionaire's retreat.”³⁹ *ibid.* p. 332
- Even though he eventually turned the land over to the National Park, “natives soon found themselves victims of racial and economic discrimination. For example, the Caneel Bay Resort, a part of the national park, was opened to the public, but did not cater to the natives; the natives were being denied the opportunity to purchase land around the exclusive areas. In short, the national park was on the verge of taking over the island and turning it into a millionaire's club.”⁴⁰ *ibid.* p. 333 This has occurred, and the Park constantly discriminates against natives. The most recent example is its refusal to grant land for public purposes, such as for a school for the native population to avoid them having to travel off-island to attend high school daily, while conversely allowing private businesses such as a hotel to occupy park land for over 40 years, for private benefit.
- The 1960's produced the greatest population growth primarily by immigration that the Virgin Islands had ever seen during American rule. By 1965, natives had become a minority in their homeland. Between 1950 and 1965, the population of every other ethnic group other than natives had more than trebled. Our relatives and friends from the other Caribbean islands went from 1,000 to 10,000. Puerto Ricans went from 3,000 to 9,700. Continentals went from 1,500 to 6,500.⁴¹ Boyer pp. 255-256 Natives have still not recovered from the inordinate burdens placed on the infrastructure, such as roads, schools, social services, health care, water and power, etc.
- Natives do not have any control over population growth by immigration, and thus their right to vote for their constitution and their final status is being

threatened by immigrants from the U.S. and elsewhere, who have outnumbered them since the 1960's. This is a direct and flagrant infringement on the right of natives to self-determination as guaranteed under international law.⁴² (See the United Nations Charter, the International Covenant on Civil and Political Rights, Resolutions, 1514 (XV), 1541 (XV) and 35/118.)

- The application of U.S. immigration laws and the freedom of immigrants to buy land in the V.I., have also affected the ability of natives to purchase and retain land for homes and other enterprises in pursuance of the American dream in the V.I. This was specifically noted among other impacts of cultural tourism in a 1969 doctoral dissertation by Martin Garson Orlins. The homes built by immigrants from the U.S. in particular, (some of whom are rich retirees, who can afford to build extravagant mansions), in many instances have driven property values sky high, and thus increased property taxes to a point beyond which many natives who were fortunate to buy land, cannot afford to keep their property. Many have been forced to sell property they had wanted to keep in their family for their children, grandchildren, and other relatives.⁴³ See study of Martin Garson Orlins in Boyer, pp. 254-256.

Others who would like to purchase land cannot afford to do so. *There are also many stories about price reductions for land offered to whites that are being denied to natives.*

- Gentrification, which was predicted over 30 years ago by Dr. Marilyn F. Krigger, a native U.V.I. professor, is again threatening the realization of the compelling state interest of diversity and the right of natives to buy land and live where they choose on the islands. The islands are being divided into enclaves for the rich and famous on the one hand and enclaves for the poor natives on the other.⁴⁴ Boyer, Footnote 93, p.282.
- Furthermore, natives are being forced once again to relocate to other places and leave their homeland where their relatives and friends reside and where all of their fondest memories are. There is a cultural tie or relationship to the land that some migrants do not understand, and it is difficult for many natives to simply migrate and leave all they have worked for and built behind, as persons who migrate here voluntarily do.⁴⁵
- At the rate that immigration is occurring, many Natives are being forced to leave their homeland. They soon will become more and more of a marginalized minority in their homeland, and will not be able to elect their political officials such as senators or even their highest official, the Governor.⁴⁶
- Even writing their constitution has been criticized because of the protections placed therein to offset the adverse effects on natives caused by the historical discrimination by government officials in the V.I. under U.S. rule, the indiscriminate application of U.S. immigration and other laws to the territory, and the threat to the preservation of the traditional culture and way of life of the natives.⁴⁶ Personal experience
- Recently a celebration of piracy that included the picture of President Obama in a pirate outfit occurred. This was totally reprehensible to me. Over the years, the increased presence of persons from the U.S. mainland has brought with them an infusion of questionable cultural practices that are at variance and sometimes disrespectful to the local culture. The pirate festival and contest, is one such practice, which is threatening to become an institution. Pirates were criminals who used these islands to store their booty. There is nothing positive about them that we should be celebrating or commemorating.⁴⁷ (Personal experience)
- Natives are not similarly situated with immigrants from the U.S. or from other countries. The right to U.S. Citizenship by natives is tenuous at best, because it is only guaranteed by a statute and not by the U.S. Constitution. Two federal officials even recommended granting natives U.S. Citizenship by the 14th Amendment to the U.S. Constitution in the early 1980's when the Fourth Draft Constitution was being considered by Congress. One of them pointed out an instance in the mid 1970's where congress passed a law that removed the right of V.I. natives to be U.S. citizens; however, it was caught in time, and no harm was inflicted. This could never happen to non-natives or U.S. citizens living in one of the states.⁴⁸ See Herman Marcuse's testimony at an October 21, 1981 Hearing of the Senate's Energy and Natural Resources committee regarding the Fourth Constitution of the V.I. of the U.S.A.
- If the status quo is allowed to continue, these islands will completely become an enclave for the rich and famous, and the natives along with the rich culture they have created, preserved and practiced, will disappear.⁴⁹

Notes

- ¹ Willocks, Harold, "The Umbilical Cord," 1995. p. 193.
- ² *ibid.* p. 192.
- ³ *ibid.* p. 220
- ⁴ *ibid.* p. 220
- ⁵ *ibid.* p. 221
- ⁶ *ibid.* pp.221-222
- ⁷ *ibid.* p. 223
- ⁸ *ibid.* p. 223
- ⁹ *ibid.* p. 223
- ¹⁰ *ibid.* p. 314
- ¹¹ See Herman Marcuse's testimony at an October 21, 1981 Hearing of the Senate's Energy and Natural Resources Committee regarding the Fourth Constitution of the V.I. of the U.S.A.
- ¹² Boyer, William America's Virgin Islands, A History of Human Rights and Wrongs. 1983, pp. 115-116.
- ¹³ (Willocks, p. 283.)
- ¹⁴ Boyer *op. cit.* p. 114-115
- ¹⁵ Willocks. *op. cit.* p. 229
- ¹⁶ *ibid.* p. 253
- ¹⁷ *ibid.* p. 255
- ¹⁸ *ibid.* p. 263
- ¹⁹ Act of Congress, June 22, 1936, Ch. 699, § 17, 49 Stat. 1811)
- ²⁰ Willocks p. 263
- ²¹ *ibid.* pp. 264-65; & Boyer pp.142-145
- ²² Willocks p. 265
- ²³ *ibid.* p.266
- ²⁴ *ibid.* p. 267
- ²⁵ *ibid.*
- ²⁶ *ibid.* p. 269
- ²⁷ *ibid.*
- ²⁸ *ibid.* pp. 282-287
- ²⁹ *ibid.* p.296
- ³⁰ *ibid.* p.300
- ³¹ *ibid.* p. 300
- ³² *ibid.* p. 303
- ³³ *ibid.* p. 304
- ³⁴ *ibid.* p. 309
- ³⁵ *ibid.* p. 317
- ³⁶ *ibid.* pp. 318-319
- ³⁷ *ibid.* p. 326
- ³⁸ *ibid.* p. 329-330
- ³⁹ *ibid.* p. 332
- ⁴⁰ *ibid.* p. 333
- ⁴¹ Boyer pp. 255-256
- ⁴² See Ch. 11, Art. 73, Sec.'s (a-e) of the United Nations Charter, the International Covenant on Civil and Political Rights, Resolutions, 1514 (XV), 1541 (XV) and 35/118.
- ⁴³ See Martin Garson Orlins' study in Boyer, pp. 254-256.
- ⁴⁴ Boyer, Footnote 93, p.282.
- ⁴⁵ Personal experience
- ⁴⁶ Personal opinion
- ⁴⁷ Personal experience
- ⁴⁸ See Herman Marcuse's testimony at an October 21, 1981 Hearing of the Senate's Energy and Natural Resources Committee regarding the Fourth Constitution of the V.I. of the U.S.A.
- ⁴⁹ Personal opinion

Ms. BORDALLO. I thank you very much, Mr. Emanuel, for your testimony. and I now recognize Dr. Hassell-Habtes for five minutes.

**STATEMENT OF LOIS HASSELL-HABTES, PH.D., DELEGATE,
FIFTH CONSTITUTIONAL CONVENTION**

Dr. HASSELL-HABTES. Good afternoon, Honorable Madeleine Bordallo, Chairperson, and our delegate to Congress for the U.S. Virgin Islands, Donna M. Christensen.

I am grateful and appreciative to be here today to represent the people of the Virgin Islands as an elected delegate to the Fifth Constitutional Convention. I would like to express my deep and sincere thanks and appreciation to the President of the United States, Barack Obama, for sending the constitution of the United States Virgin Islands to Congress.

First of all, I bring greetings from the people in the Virgin Islands who understand the time has come for us to be governed by a constitution of the Virgin Islands and not by a Organic Act written in 1936 and amended in 1954. There have been many Virgin Islanders who attended, listened to, or reviewed the committee meetings, hearings, plenary sessions, and their voices and concerns have been included in this document.

Just as the drafting of the U.S. Constitution, arguments, debates, differences of opinions have not kept the delegates of the Fifth Constitutional Convention from a united front when it came to ensuring that the people voice and future generations of this territory are protected and governed accordingly.

Today I further bring calm, peaceful waves from our serene, beautiful islands, which demand a certain culture. We have living and traditions which have stood the test of time. Great are our ancestors who have kept these traditions going for generations to come. As Virgin Islanders, we do not have a choice of letting go of these traditions of which we are a part. For who gives us the right to stop what has been passed on from generation to generation? What we know is that these traditions were passed on to protect us, and inherently denotes a way of living to many of us is not easy, but necessary and respectful to our environment. This document in front of you has taken the necessary steps to preserve our traditions and way of life.

As chair of the preamble, anthems, symbols, bill of rights, and human rights committee, we held committee meetings and hearings on all three islands in the territory, which were open to the public, well-publicized in local newspapers and radio, and well-attended. Most importantly, members of this committee, as well as testifiers, presenters, and people of the Virgin Islands who attended these meetings, wanted our preamble to present the history of the Virgin Islands people, who have been inclusive and accepting of the many people who have migrated to the territory, who have built and contributed to the benefit of these islands. We feel our preamble does just that.

The intent under the provisions addressing territorial waters and marine resources and submerged lands was not to usurp the Federal laws, but to ensure the protection of the marine resources and submerged lands. Members of this committee felt that every person in the territory has a right to an environment which is protected and preserved without pollution and degradation.

I am hopeful that today success can be achieved for our people and for future generations of the United States Virgin Islands. Thank you.

[The prepared statement of Dr. Hassell-Habtes follows:]

Statement of Lois Hassell-Habtes, Ph.D., Delegate to the Fifth Constitutional Convention; Chair, Preamble, Anthems, Symbols, Bill of Rights and Human Rights Committee; Committee Member, Education, Youth, and Culture; Committee Member, Economic Development and Labor; Committee Member, Citizenship, Virgin Islands Rights, Environment, & Cultural Preservation

Honorable Madeleine Bordallo, Chairperson of the Subcommittee on Insular Affairs, Oceans and Wildlife, Committee Members, officials, ladies and gentlemen:

I am Lois Hassell-Habtes, an elected delegate to the Fifth Constitutional Convention of the U.S. Virgin Islands. I am grateful, and appreciative to be here today, to represent the people of the Virgin Islands.

Let me officially say thank you to our Virgin Islands Delegate to Congress, The Honorable Donna M. Christensen for her work in getting us here today. I am proud to be a part of this progressive movement in the Virgin Islands towards shaping our future for generations to come.

First of all, I bring "greetings" from the people in the Virgin Islands who understand the time has come for us to be governed by a Constitution of the Virgin Islands, and not by an Organic Act written in 1936 and amended in 1954. I am certain that we are here because of strong leadership in this convention which by court order addressed the legislative mandate to forward the Constitution to the President of the United States.

Let me state unequivocally, that many delegates, and people of the Virgin Islands, who attended, listened to, or participated in the many committee hearings and plenary sessions, have despite differences of opinion extended their support for this process. But, just like the drafting of the U.S. Constitution, arguments, debates, and differences of opinions. We remain united in our effort to ensure that future generations have the opportunity for full participation in their government.

All delegates signed and agreed to respect and follow the rules and regulations of this Fifth Constitutional Convention, headed by President Gerard Luz James II. This led to a two thirds vote on the Constitution of the Virgin Islands, so that we could move forward.

Today, I further bring calm, peaceful waves from our serene, beautiful islands, which demand a certain culture, way of living, with rich traditions, which have stood the test of time. Great are the ancestors who preserved these traditions for generations. As Virgin Islanders, we do not have a choice of letting go of these cultural traditions of which we are a part. For who gives us the right to stop what has been passed on from generation to generation.

What we know is that these traditions were passed on to protect us as a people. These traditions inherently denote a way of living that to many of us, is not easy but necessary and respectful to our environment.

However, as I testify before you today, it is with an understanding of a historical disconnect between the people of the Virgin Islands and the existing territorial/federal relationship. As delegates we are acutely aware of the reality that the Virgin Islands electorate has voted against certain provisions contained in the previous proposed constitutions. The Fifth Constitutional Convention has worked diligently to include their recommendations in our proposed constitution.

I will specifically address the two major committees on which I served, Preamble and Education and Culture.

THE SOVEREIGNTY OF THE UNITED STATES:

It should be emphasized that the Fifth Constitutional Convention began with the mandate that all committee Chairs ensure that their committee members consider the language contained in the fourth proposed constitution.

As Chair of the Preamble, Anthems, Symbols, Bill of Rights, and Human Rights Committee I held committee meetings and hearings throughout the territory. These meetings were all open to the public, well publicized in the local newspapers and on the radio, as well as and well attended. We feel that we succinctly delineated the sovereignty and supremacy of federal law. We are well aware that as an unincorporated territory, we have only the authority authorized by federal law and recognized this document is not intended to change the status document.

The Department of Justice has expressed concerns with certain provisions in our proposed Constitution. These provisions, however, can inherently be traced back to the impact of increased immigration to the territory as a result of federal which has stimulated economic development, but which has also caused a certain disconnect among the native Virgin Islanders. We are of the view that certain provisions are necessary to address this disconnect, and to ensure a homeland for future Virgin Islanders.

Most importantly, members of this committee, as well as testifiers, presenters, and people of the Virgin Islands who attended our meetings wanted the Preamble of the proposed constitution to present the history of the Virgin Islands people who have been inclusive and welcoming of all groups who have who have chosen to make the Virgin Islands their home. We feel that the Preamble does just that.

EDUCATION AND CULTURE:

The rapid growth experienced by Virgin Islands society has resulted in significant overcrowding of our schools. Therefore the quality education received in small, attentive, loving classrooms of locally trained teachers of which we were accustomed has changed to overcrowded schools and a need for more teachers and educators who better understand the students, their culture and their island home.

We are a proud people who have struggled and toiled in their land for progress and benefits for their people and now find themselves competing for their very existence and are losing the battle. We must fight to ensure that our people are properly educated and the culture which defines this land is protected and preserved for generations to come.

BILL OF RIGHTS PROVISIONS:

Having reviewed Assistant Attorney Generals' review of the bill of rights this provision within the Constitution, it is clear that protections for the people, including "the dignity of the human being," and "the right to a reasonable expectation of privacy" could burden or constrain the local government. However, the relevant committee that dealt with this section felt it was important that these rights are extended to the people through their inclusion in the Bill of Rights.

TERRITORIAL WATERS, MARINE RESOURCES AND SUBMERGED LANDS:

The Committee on Citizenship, Virgin Islands' Rights, the Environment, and Cultural Preservation's intent was to make sure that we also included the protection of the territorial waters, and its submerged lands not to usurp federal law. Members of the committee felt that every person in the territory has a right to an environment which is protected and preserved, without pollution and degradation. Therefore, committee members felt that by promoting conservation efforts, we would be able to secure ecological development and conservation of our land, waters and their ever diminishing resources. This was not to usurp the federal government's control.

In closing, I have shared with you the intent of the Delegates of the Fifth Constitutional Convention in writing the Constitution of the Virgin Islands. We have long been and remain ready for enhanced self government. I remain hopeful for fruition of our goals

Ms. BORDALLO. Thank you very much, Dr. Hassell-Habtes, for your testimony. I now recognize Dr. Petersen.

**STATEMENT OF EUGENE A. PETERSEN, DVM, DELEGATE,
FIFTH CONSTITUTIONAL CONVENTION**

Dr. PETERSEN. Madame Chair, ladies and gentlemen of the Committee on Natural Resources, and the Subcommittee on Insular Affairs, Oceans, and Wildlife, my name is Dr. Eugene Petersen, and I would like to thank you for this opportunity, on my own behalf as a citizen of the Virgin Islands of the United States.

While I am a member or a delegate to the Fifth Constitutional Convention, I am not here today representing that body. I felt it necessary to testify as one of the five delegates who voted in opposition to the adoption of the proposed Virgin Island constitution in its present form before you today.

I was born in St. Croix, the United States Virgin Islands, one of the islands that comprise the former Danish West Indies. My ancestral ties to the island of St. Croix can be traced back to the period of emancipation of the slaves in 1848 and possibly beyond that. I have resided on St. Croix my entire life except for a brief period where I pursued my education here in the United States. And upon my return home, I practiced there as a veterinarian for over 25 years.

I was elected as a delegate to the Fifth Virgin Islands Constitutional Convention in 2007, which is in recess at this time awaiting the return of the document from the U.S. Congress. It is with great pleasure and humility that I accept this opportunity to testify before this great body today concerning the adoption of the constitution for this magnificent territory of the Virgin Islands of the United States.

Faith and conviction has brought me here today, faith that the diverse population of the Virgin Islands can live together as one, and the conviction that the people of my homeland desire to do the right and just thing concerning home rule and self-governance by the entire population of these Virgin Islands, of which I am so proud. I want to make it abundantly clear that I strongly support the adoption of a constitution created by the citizens of the territory and for the citizens of the territory. It pains me to be here today asking the U.S. Congress to modify and to make changes to a document created by the elected officials representing the people of the Virgin Islands.

However, it is my opinion that there are portions of this proposed constitution that if adopted will do irreparable harm to the social and economic fabric of the territory. Many of us today are more qualified than I am to testify accurately on the historical and constitutional relevance of this document, which I am fully conscious of. However, it is the social and the economic impact that is problematic and raises concern for many of the citizens with whom I confer.

As I mentioned before, the Virgin Islands is a diverse community which is comprised of many citizens from various parts of the world. Many of the current population migrated to the territory over a long period of time, establishing roots and contributing to the development of the territory. Many were born in the territory of parents or grandparents who migrated here. And many are first generation citizens who live and worked in the territory for many years, creating social and economic base.

These citizens consider themselves true Virgin Islanders, and no other existence besides the life that currently exists for them. We embrace these people. And the mass majority of the people of the Virgin Islands live in harmony. If many of the provisions proposed in this document are adopted, I believe that it will rip this delicate social and economic fabric apart and create disharmony in our community unlike anything that you have ever seen before.

In addition, I believe that with these provisions included, the document will find it almost impossible to be ratified by the current citizens of the territory. This possibility is most disturbing to me. And I am convinced that this is an important step toward self-determination. It is important to note that this is our fifth attempt

to ratify a document. And as time elapses, it will become increasingly difficult to reach consensus as the population changes.

It is with great trepidation that I request the Congress of the United States to make the necessary changes to the proposed constitution so that some of the constitutional concerns may be alleviated, avoid social and economic distress, and allow the document to be more acceptable to the vast majority of the citizens to ensure ratification upon its return to the people of the Virgin Islands.

Some say that if Congress may change as much as one word in this proposed document, that it is no longer a document of the people. I beg to differ, as upon ratification by the people of the Virgin Islands, it then becomes their document, or our document, to change and modify as prescribed therein.

Therefore, without any further ado, I request that Congress make those changes as outlined in my proposal or my testimony, which I see that I am out of time. And I want to thank you very much. And some of the questions that you asked, I would like to address some of those questions that were asked of the other panel before. Thank you.

[The prepared statement of Dr. Petersen follows:]

Statement of Eugene A. Petersen, DVM, Member/Delegate, Fifth Virgin Islands Constitution Convention, Frederiksted, St. Croix, Virgin Islands

Ladies and Gentlemen of the Committee on Natural Resources, subcommittee on Insular Affairs, Oceans and Wildlife. I thank you for this opportunity to testify on my own behalf as a citizen of the Virgin Islands of the United States. While I am a member/delegate of the Fifth Virgin Islands Constitution Convention, I am not here today as representing that body. I felt it necessary to testify as one of the five delegates who voted in opposition to the adoption of the Proposed Virgin Island Constitution in its present form that is before you today.

I was born on St. Croix, United States Virgin Island, one of the islands that comprised the former Danish West Indies. My ancestral ties to the island of St. Croix can be traced back to the period of the emancipation of the slaves in 1848, and possibly beyond that. I have resided on St. Croix my entire life except for a period of time where I attended Tuskegee University in Alabama and worked for a brief period of one year in the great state of Massachusetts after earning my Doctorate degree in Veterinary Medicine. Upon returning to the Virgin Islands I practiced as a mixed practice veterinarian for over 25 years. I was elected as a delegate to the Fifth Virgin Islands Constitutional Convention in 2008, which is in recess at this time awaiting the return of the document from the United States Congress.

It is with great pleasure and humility that I accept this opportunity to testify before this great body today. There are numerous individuals that are probably better suited to be here testifying on this matter concerning the magnificent territory of the Virgin Islands of the United States. But faith and convictions has brought me here today. Faith that the diverse population of the Virgin Islands can live together as one, and the conviction that the people of my homeland desire to do the "right and just thing" concerning home rule and self-determination of the entire population of these Virgin Islands of which I am so proud.

I want to make it abundantly clear that I strongly support the adoption of a constitution created by the citizens of the territory, for the people of the territory. It pains me to be here today asking the United States Congress to modify or make changes to a document created by elected officials representing the people of the Virgin Islands. However, it is my opinion that there are portions of this proposed constitution that, if adopted, will do irreparable harm to the social and economic fabric of the territory. Many others today can testify more accurately on the historical and constitutional relevance of the document of which I am fully conscious. However, it is the social and economic impact that are problematic and raises concerns for many of the citizens with whom I confer.

As I mentioned before, the Virgin Islands are a diverse community which is comprised of many citizens from various parts of the world. Many of the current population migrated to the territory over a long period of time establishing roots and contributing to the development of the territory. Many were born in the territory of par-

ents or grandparents who migrated here, and many are first generation citizens who lived and worked in the territory for many years creating a solid social and economic base. These citizens consider themselves true Virgin Islanders and know no other existence besides the life that currently exist. We embrace each other and the vast majority live in harmony.

If the many of provisions proposed in this document are adopted I believe that it will rip this delicate social and economic fabric apart and create disharmony in our community unlike anything that we have seen before.

In addition, I believe that with these provisions included, the document will find it almost impossible to be ratified by the citizens of the territory. This possibility is most disturbing to me as I am convinced that this is an important step toward self-determination. It is important to note that this is our fifth attempt at ratifying a document and as time elapses it will become increasingly difficult to reach consensus as the population rapidly changes.

It is with great trepidation that I request the Congress of the United States to make the necessary changes to the proposed constitution so that some of the constitutional concerns may be alleviated, avoid social and economic distress, and allow the document to be more acceptable to the vast majority of citizens to insure ratification upon it's return to the people of the Virgins Islands. Some say that if congress as much as change one word in the proposed document that it no longer is "a document of the people". I beg to differ as upon ratification it will become the people's document to change and modify as prescribed within.

Therefore, without any further due I request that the Congress of the United States make that following changes to the Proposed Fifth Virgin Islands Constitution as follows:

1. Delete—Article II, Principles of Government. Section 5—Supreme Law of the Virgin Islands. "This Constitution shall be the supreme law of the Virgin Islands".

The removal of this clause will eliminate any ambiguity that may arises concerning the sovereignty of the United States Constitution over the Virgin Islands of the United States.

2. Delete—Article VI, Executive Branch. Section 3, subsection (d). "be an Ancestral Virgin Islander or Native Virgin Islander".

The removal of this clause will not only alleviate constitutional concerns, but avoid social distress on the part of citizens who will not qualify as a Native Ancestral Virgin Islanders"

3. Delete—Article XI, Taxation, Finance and Commerce. Section 5, subsection (g). "No Real Property tax shall be assessed on the primary residence or undeveloped land of an Ancestral Native Virgin Islander".

This provision will destroy the property tax base of the territory and have grave negative economic impact.

4. Delete—Article XVII, Political Status Advisory Commission. section 1, subsection (b) "who are Ancestral Native and/or Native Virgin Islander"

This section makes special provisions for Native and Ancestral Natives which will prevent tax paying citizens from participating in the election process and prevent them from being appointed to this commission.

5. Delete—Article XVII, Political Status Advisory Commission. section 2, subsection (b). "The special election on status shall be reserved for vote by Ancestral Native and Native Virgin Islanders only, whether residing within or outside the territory."

This provision allows Native and Native Ancestral Virgin Islander regardless of there current relationship to the community to vote on the status issue while preventing tax paying citizens from voting.

6. Delete—Article XVIII, Constitutional Amendments, section 7—Ratification of Amendments. "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 Constitutional amendments".

This clause will render voting rights to Native and Ancestral Native Virgin Islander who have no recent ties to the territory, and who are not domiciled in the territory.

Once again I would like to thank you for allowing me to testify today and I hope that my testimony is useful in your consideration of the proposed Virgin Islands Constitution.

Ms. BORDALLO. Very good. Thank you, Dr. Petersen, for a very passionate testimony that you gave before the Subcommittee. I now recognize Mr. Brady for five minutes.

**STATEMENT OF DOUGLAS BRADY, DELEGATE,
FIFTH CONSTITUTIONAL CONVENTION**

Mr. BRADY. Thank you very much, Madame Chairwoman Bordallo, Congresswoman Christensen. Good afternoon. Thank you very much for this opportunity to testify. I like my good friend Dr. Petersen was one of the five dissenting members of the constitutional convention, and also one of the 11 signatories to two letters that were sent dated January 29, 2010, to President Obama and to Congresswoman Christensen, including proposed modifications to the document. I would ask the Chair if those letters and attachments could be added to the record of the Subcommittee, together with my written statement.

Ms. BORDALLO. No objection. So ordered.

[NOTE: The letters submitted for the record have been retained in the Committee's official files.]

Mr. BRADY. Thank you, Madame Chair. I am here speaking as an individual. Congress has gone a long ways over the last 93 years to grant autonomy to the people of the Virgin Islands. As of 1968, we elect our own Governor. We now have the right to determine the number of our legislators and the apportionment of our legislature. As of 1984, the Revised Organic Act amendment gives virtually unlimited jurisdiction over local matters to our local courts.

But these have all been imposed upon us by acts of Congress. This is our opportunity to create our own structure of local government. And this is such a great opportunity, as the speakers before me have mentioned, and as the Subcommittee is well aware. The document before you represents the fruits of the labors of the Fifth Constitutional Convention, and those were diligent and difficult labors. Congress has 60 days to act. The realities of acting within 60 days are well understood. A very short time, notwithstanding everything else that you all have on your plate these days.

But frankly, the failure to act has been discussed well, and the document will be deemed approved. But candidly, that would appear to me, as Delegate Christensen mentioned earlier, as inconsistent with the article 4 oversight responsibilities of the Congress. And frankly, it would be politically the death knell of this document, which would be dead on arrival in this format back to the Virgin Islands.

It would also signify either that the Congress doesn't care enough about the Virgin Islands to send back a document that is unquestionably inconsistent with the provisions of the Equal Protection Clause of the U.S. Constitution applicable to the Virgin Islands.

Saying all that, the congressional is and must be limited only to make sure that U.S. sovereignty is recognized and only to make sure that the document presented is recognized as consistent with the U.S. Constitution, treaties, and laws. The document, as has been said by many speakers, is consistent and does recognize U.S. sovereignty from the first paragraph of the preamble acknowl-

edging our status as an incorporated territory. It is clear that we recognize that U.S. sovereignty governs the Virgin Islands throughout the document, several references. And the very thorough analysis of the Department of Justice confirms that, regarding U.S. sovereignty, there is substantial compliance.

The big, big, big problem with the document is the fact that legal advantages are conferred on certain classes of people. Those same legal advantages are denied to other classes of people. The history of the Virgin Islands and Virgin Islanders is a proud one, and the pride in the heritage of ancestors is to be commended. And there are means by which this can be accomplished. However, granting special privileges to certain classes of people, and within—and as the Department of Justice analysis recognizes clearly, differentiating between somebody who moved to the Virgin Islands in 1931 and somebody who moved to the Virgin Islands in 1933 cannot support any legitimate governmental concern.

As my red light is now on, I am going to close up here. But I would like to ask Congress to do what is clearly a difficult task, and that is to strike those specific five provisions of the document as it is before you that grant those special rights.

Just very, very briefly, the other matter concerning territorial waters, there is a quick fix. And I think as other testifiers have said, it was the intention of the Convention to recognize that provision on territorial waters can only be considered in a manner consistent with U.S. laws. And I would recommend the inclusion of the document. It is not a perfect document. I voted against many of the provisions. But it is our document. And therefore, I would suggest that Congress must act to give us back a document upon which we can vote, and must not go farther than that.

The people of the Virgin Islands deserve to have an appropriate document returned to them. And I thank you for your consideration.

[The prepared statement of Mr. Brady follows:]

Statement of Douglas A. Brady, Delegate, Fifth Constitutional Convention of the United States Virgin Islands

With appreciation to the Subcommittee for considering these remarks, I write concerning this matter of the utmost importance to the people of the Virgin Islands. I ask that the Subcommittee also consider letters of January 29, 2010 from eleven delegates of the Fifth Constitutional Convention to President Obama and to Congresswoman Christensen, each enclosing a copy of the proposed constitution marked up to reflect recommended modifications to eliminate those provisions, and only those provisions, deemed to be infirm as inconsistent with the Federal Constitution. Copies of those letters and of the marked up proposed constitution were submitted by my letter to Chairwoman Bordallo dated March 8, 2010.

Background

Congress enacted the 1976 enabling legislation permitting the people of the Virgin Islands to adopt a constitution for local self-government “recognizing the basic democratic principle of government by the consent of the governed.” (Act of Oct. 21, 1976, Pub. L. 94-584, 90 Stat. 2899.)

Over the past half century, exercising its Article IV, Section 3 power respecting the Territories of the United States, Congress has enhanced the political autonomy and self-governance of the Virgin Islands, enacting laws to establish the popular election of our governor, to permit local law to determine the number and apportionment of legislators and granting virtually unlimited jurisdiction over local matters to the courts of the Virgin Islands.

These important steps in achieving political self-determination for Virgin Islanders have been granted by federal legislation. But by Public Law 94-584, Con-

gress has authorized the people of the Virgin Islands to organize our own government pursuant to a constitution to be adopted by Virgin Islanders. With this prospect of self-governance as our goal, this process upon which we have embarked is among the most significant in the ninety-three year history of the American Virgin Islands. It is a process that must succeed in order that we may realize a government of the Virgin Islands crafted and adopted by the consent of the governed.

In 2004, pursuant to Public Law 94-584, the Twenty-Fifth Legislature of the Virgin Islands enacted Act No. 6688 establishing the Fifth Constitutional Convention of the Virgin Islands “as a significant step toward greater self-determination and autonomy in the Territory’s relationship with the United States Government.”

The delegates to the Fifth Constitutional Convention elected by Virgin Islands voters, despite limited resources, diligently labored to prepare and adopt a proposed constitution for submission by the Governor of the Virgin Islands to the President and Congress in compliance with Public Law 94-584. Notwithstanding those diligent efforts, it is recognized that the proposed constitution before the Subcommittee is flawed and, in parts, out of harmony with provisions of the Constitution and laws of the United States.

As recommended by the February 23, 2010 analysis of the U.S. Department of Justice Office of Legislative Affairs (“DOJ Analysis”) submitted with President Obama’s February 26, 2010 transmittal to Congress, those constitutionally infirm sections of the proposed constitution, and only those sections, should be modified by Congress before the proposed constitution is returned for submission to the qualified voters of the Virgin Islands.

Analysis

The need for limited Congressional action. President Obama and the DOJ Analysis note nine features of the proposed constitution that “warrant comment.” The last of those features concerns “the effect of congressional action or inaction on the proposed constitution.” In the event that Congress fails to approve, modify or amend the proposed constitution by joint resolution within sixty days of President Obama’s transmittal, it shall “be deemed to have been approved.”

With deference to Congress, the failure to take timely action would be inconsistent with its Article IV oversight powers and responsibilities. By the 1976 enabling legislation, Congress granted the Territory the power to call a constitutional convention to draft a constitution which shall “recognize, and be consistent with” the supremacy of the Constitution, treaties and laws of the United States. To the extent that the proposed constitution is not so consistent, Congress would be remiss to permit the document to “be deemed to have been approved.”

On the other hand, the enabling legislation, recognizing “the basic democratic principle” of self-governance, authorizes the people of the Virgin Islands to organize their own government through a constitutional convention comprised of members chosen pursuant to Virgin Islands law. In accordance with Public Law 94-584, the Virgin Islands Legislature established the Fifth Constitutional Convention, with delegates elected by the voters of the Territory. These representatives of the people of the Virgin Islands have drafted the document before the Subcommittee that is to be returned to the people of the Virgin Islands for acceptance or rejection.

This exercise in government by the consent of the governed, while subject to Congressional oversight must remain an exercise of, by and for the people of the Virgin Islands. The role of this Congressional review process must not be to substitute the judgment of federal legislators for that of the people of the Virgin Islands. To the extent that the proposed constitution recognizes and is consistent with the sovereignty and supremacy of the United States, its Constitution, treaties and laws, it must be approved by Congress and returned to the people of the Virgin Islands.

DOJ Analysis bottom line. Notwithstanding its recitation and review of nine areas of concern that warrant comment, the DOJ Analysis recommends definitively that only two features cause sufficient concern to warrant removal or amendment. Those features: (1) provisions conferring legal advantages on certain groups based on national origin and ancestry; and (2) provisions addressing territorial waters and marine resources, are addressed in order.

(1) Legal advantages conferred on certain groups. The following provisions confer different legal treatment of Ancestral Native Virgin Islanders and Native Virgin Islanders, defined in the proposed constitution in Article III, Sections 1 and 2, from other persons within the Virgin Islands:

- Article VI, Section 3(d): Governor and Lt. Governor must be “an Ancestral or Native Virgin Islander;”
- Article XI, Section 5(g): Primary residences and undeveloped land of Ancestral Native Virgin Islanders are exempt from assessment of real property tax;

- Article XVII, Section 1(b): Political Status Advisory Commission is to be created with members “who are Ancestral Native and/or Native Virgin Islanders;”
- Article XVII, Section 2(b): Special election on status and federal relations “shall be reserved for vote by Ancestral Native and Native Virgin Islanders only, whether residing within or outside the territory;”
- Article XVIII, Section 7: “Ancestral and Native Virgin Islanders, including those who reside outside of the Virgin Islands” have the non-exclusive right to vote in elections to ratify proposed constitutional amendments.

The thorough treatment of these provisions within the DOJ Analysis (§II.C., pages 6-10) notes the absence of any expressed or discernable legitimate governmental purpose for treating particular groups of citizens of the United States and the Virgin Islands differently from other groups of citizens concerning any of these subject areas. As such, the provisions are in violation of the equal protection clause of the Fourteenth Amendment of the U.S. Constitution, applicable to the Virgin Islands pursuant to the Section 3 of the Revised Organic Act of 1954 (48 U.S.C. § 1561).

I ask that Congress modify the proposed constitution by eliminating Article VI, Section 3(d) and Article XI, Section 5(g) in their entirety; by eliminating the phrase “who are Ancestral Native and/or Native Virgin Islanders” from the first sentence of Article XVII, Section 1(b); by eliminating Article XVII, Section 2(b) in its entirety; and by eliminating in its entirety the second sentence of Article XVIII, Section 7.

I do not ask Congress to eliminate the definitions of Ancestral Native Virgin Islander and Native Virgin Islander. Persons who trace their Virgin Islands ancestries back multiple generations are justifiably proud of their heritage. The proposed language defining these persons simply recognizes that heritage.

I do believe the inclusion of the definitions language to be politically imprudent, and that Virgin Islands ancestry could more appropriately be recognized by local legislation or other means rather than by constitutional definition. I fear that individuals and other groups will see the inclusion of such language not as recognition of heritage but as the designation of privileged classes, with the looming prospect that different categories of persons will enjoy or suffer different advantages or disadvantages.

As such, I am concerned that the inclusion of definitions, even without special privileges, threatens the success of the constitution in the referendum before the electorate. Nonetheless, in keeping with the view that the limited role of Congressional review extends only to insuring compliance with the Federal Constitution, treaties and laws, I ask that the language defining Ancestral Native Virgin Islanders and Native Virgin Islanders be approved.

(2) Territorial waters and marine resources. Article XII, Section 2 of the proposed constitution asserts sovereignty of the Virgin Islands over its “inter-island waters to...extend 12 nautical miles from each island coast up to the international boundaries.” The DOJ Analysis notes that while the meaning and effect of this provision are not clear, concerns exist that claims of Virgin Islands sovereignty are inconsistent with federal law to the extent intended to derogate from the sovereignty of the United States.

This legitimate concern set out in the DOJ Analysis can be readily resolved in a manner that, although it doesn’t clarify the intent, meaning and effect of the provision, does allay fears of any attempted usurpation of federal sovereignty.

I recommend that at the end of the last sentence of Article XII, Section 2, a phrase be added, such that the last sentence reads: “This is an alienable right of the people of the Virgin Islands of the U.S. and shall be safeguarded, in a manner consistent with the laws of the United States.” (Added phrase in italics.)

Other DOJ concerns. Apart from those two features of the proposed constitution noted above, the DOJ Analysis does not recommend that any other provision of the document must be eliminated or modified to assure compliance with the Constitution, treaties and laws of the United States. Several other features of the proposed constitution which warranted comment in the DOJ Analysis are addressed here.

(1) Recognition of U.S. sovereignty and the supremacy of U.S. laws. The Department of Justice indicates that it would be preferable that Congress modify the proposed constitution in order that its language explicitly recognizes the sovereignty of the United States and the supremacy of its Constitution and laws. Yet, its bottom line is that the language of the proposed constitution substantially complies with the requirements of Public Law 94-584 by its implicit recognition of federal sovereignty and the supremacy of federal law (§II.A., pages 3-6).

As the DOJ Analysis notes, the very first paragraph of the proposed constitution in its preamble states that the people of the Virgin Islands are establishing a constitution assuming the responsibilities of self-government in the context of our status “as an unincorporated territory of the United States.”

The DOJ Analysis notes that federal case law has clearly defined the relationship between the United States and its unincorporated territories in a manner that recognizes federal sovereignty and the plenary authority of Congress over territorial affairs. Accordingly, by its reference to the Virgin Islands' status as an unincorporated territory, the proposed constitution has unmistakably, although implicitly, recognized U.S. sovereignty and the supremacy of federal law.

The DOJ Analysis further notes that other provisions of the proposed constitution also recognize the authority of Congress over the Virgin Islands. The third paragraph of the preamble recognizes that the 1917 treaty between the United States and Denmark confirmed that the civil rights and political status of the inhabitants of the Virgin Islands were to be determined by Congress. Additionally, Article IV, Section 4; Article V, Section 1; Article VII, Section 2; and Article VII, Section 3 all recognize the applicability of and the requirement of consistency with the Federal Constitution and laws in the context of holding public office, limitations on legislative power, and the supremacy of federal law with reference to judicial decisions and rulemaking.

It is in this context that the language of Article II, Section 5 of the proposed constitution recognizing that "This Constitution shall be the supreme law of the Virgin Islands" must be read. As the DOJ Analysis concludes, the recognition of federal sovereignty and the supremacy of federal laws in the various provisions of the proposed constitution confirm its substantial compliance with the enabling legislation. No changes to the proposed constitution are required in this regard.

(2) Residency requirements for office holders. The proposed constitution requires that persons seeking the offices of Governor and Lieutenant Governor must have been domiciliaries of the Virgin Islands for fifteen years, at least ten of which must immediately precede the date of filing for office.

The DOJ Analysis well describes the potential equal protection concerns inherent in such a lengthy residency requirement for office holders. Indeed, in light of the cited case law, a shorter period of required residency may be preferable. Yet, the cited decisions clearly confirm that the U.S. Supreme Court has held that some durational residency requirement is constitutionally permissible. Also, the Department of Justice notes that "the territorial status and unique history and geography of the USVI make familiarity with local issues particularly important for office-holders there, [such that] the governmental interests supporting durational residence requirements for USVI offices may be particularly strong." (§ II.D., page 13.)

In this setting, the representatives of the people of the Virgin Islands have determined proper requirements for persons seeking to hold office. Whether that determination violates the equal protection rights of office seekers who have resided in the Virgin Islands for shorter periods is a judgment to be made by the courts of the Virgin Islands and the United States, if and when such a challenge is presented. Alternatively, the people of the Virgin Islands themselves can shorten the period by amendment to the approved constitution.

The role of Congress as to this provision should not be to presently substitute its view for that of the representatives of the Virgin Islands people in the context where no clear equal protection violation is evident. No modification to the proposed constitution should be imposed as to this provision.

(3) Violation of "one person, one vote" in legislative districting. In analyzing the propriety of the proposed constitution's requirement that the island of St. John have its own legislator, competing interests must be weighed. Strict adherence to the "one person, one vote" principle would effectively deprive residents of St. John from any direct and meaningful legislative representation. On the other hand, assuring such legislative representation will modestly dilute the effectiveness of the representation of residents of the other islands. The delegates to the Constitutional Convention have resolved this dilemma in favor of assuring representation for the people of St. John.

The cited case law within the DOJ Analysis establishes that equal protection concerns in such settings can only be resolved upon a review of the specific existing factual circumstances. As is true of the preceding provision addressed, the role of Congress in this context must not be to substitute its judgment for that of the representatives of the people of the Virgin Islands.

The Department of Justice does not recommend specific changes to this provision of the proposed constitution, notwithstanding noting the potential litigation risk inherent in such legislative apportionment. The potential for litigation exists in numerous provisions of the proposed constitution, and litigation concerning those provisions will keep the Virgin Islands Supreme Court busy for years to come. Yet, such litigation is part of the process of establishing autonomy and self-governance for the people of the Virgin Islands.

As recommended by the Department of Justice, the provisions relating to legislative apportionment should not be the subject of Congressional modification.

Conclusion

Consistent with its Constitutional oversight responsibilities, Congress must act to insure that the proposed constitution of the Virgin Islands recognizes and is consistent with the sovereignty and supremacy of the Constitution and laws of the United States. This can be accomplished by the elimination of several specific provisions that violate the equal protection clause of the Fourteenth Amendment applicable to the Virgin Islands.

Specifically, the proposed constitution should be modified by the striking the language referenced above from those sections that confer legal advantages on certain groups of persons based upon the place and timing of birth and ancestry: Article VI, Section 3(d); Article XI, Section 5(g); Article XVII, Section 1(b); Article XVII, Section 2; and Article XVIII, Section 7.

Further, to insure compliance with federal laws, a qualifying phrase should be added to proposed Article XII, Section 2, the last sentence of which should be modified to read: "This is an alienable right of the people of the Virgin Islands of the U.S. and shall be safeguarded, in a manner consistent with the laws of the United States." (Added phrase in italics.)

With those modifications, the proposed constitution should be approved and in accordance with Public Law 94-584 submitted to the voters of the Virgin Islands for acceptance or rejection.

Ms. BORDALLO. Thank you very much, Mr. Brady. I understand you are an attorney practicing in the Virgin Islands. And I want to thank all of the members of the second panel for being very cognizant of the time. And now we will be open for questions, and I am sure that you will have answers for most of our questions.

The first one is for you, Mr. Bryan. What is your reaction to the request for Congress to amend the proposed constitution to remove those provisions recommended by the Department of Justice to prevent it from being rejected by the voters.

Mr. BRYAN. You said Mr. Bryan, right?

Ms. BORDALLO. Yes.

Mr. BRYAN. That is me over here.

Ms. BORDALLO. Oh, that is right. I am sorry.

Mr. BRYAN. Good. I don't believe that the U.S. Congress or any one of us sitting in this room, whether Governor, delegate to Congress, or delegate to the convention are the final arbiter for the constitution for the people of the Virgin Islands. No court should settle this definition. If you read the sales treaty between the United States and Denmark, it said any misunderstanding or misinterpretation of the document should be finalized in the Hague and the Congress and the President of the United States, and no person in this room is that person for final arbiter. The only definition that you can find that settles a constitutional question is the Supreme Court. But our authority pursuant to the Danish and United States sales treaty takes us far beyond any courts in the Virgin Islands or the United States. We can go to the United Nations pursuant to resolution 1514, 1541, and 15135.

I am saying that this is not the final arbiter. I don't think Congress—because I am sure that all of us sitting in this room, and even the President of the United States, know full well that it was no Indian who was a Native American present when the United States drafted the Constitution. I cannot submit myself to an individual who has no history or no knowledge of my ancestral past to tell me or my people who should be eligible to run the country that I am from.

We are not in a position—as a veteran of the Vietnam era, I am in the Virgin Islands. I can't even vote for the President that can send me or my children to war again. We go home to the Virgin Islands and don't get the benefits. I go to the Supreme Court, and they tell us you are not a part, you are an appurtenance, and, oh, the Constitution does not apply to me. So arbitrarily, I heard a gentleman—that he was sitting right here. He said the legal connotations for native or national will not be recognized. Well, then why is it the U.S. Congress and the United States of America recognize African-American, Native American, Chinese-American—all these Americans and women. Who do you think that woman mean? The Caucasian woman because she is already in the majority in the United States. So when we look at the whole confusion here, it is clear to me that the whole attitude is about the population of people, not so much about the Congress. Congress should not have the final say in this document. That is my position.

Ms. BORDALLO. Mr. Bryan, I sympathize with you. Guam is in the same situation. And we are coming on like 30 years now, still trying to decide on our constitution.

Mr. BRYAN. We have 93 years.

Ms. BORDALLO. Would you agree inasmuch as it has taken all of these years and all of these different proposals have been put forth—I think this is our fifth. Is that correct? Do you agree that if this proposed constitution fails, it will become almost impossible for the territory to adopt one in the future?

Mr. BRYAN. I don't think so, and I can explain to you why. From the beginning, on the onset, if the U.S. Congress had followed the resolutions of 1514, 1541, and the others of 15, they should have specified that only the people of the Virgin Islands or native of the Virgin Islands shall be eligible to vote, shall be eligible to be delegates, and shall be eligible to decide what it is because it is clear that we are allowing the situation that happened to Hawaii and Alaska and Guam to overpopulate our people to set the position that everybody who has a constitution written from where they came from. Everybody in the United States, whether they are from Kentucky, Wyoming, New Jersey, had a constitution written by them for them, and not by none of us a Virgin Island native.

So I am saying if you don't put that provision, only native Virgin Islanders or ancestral Virgin Islanders shall be able to be eligible and vote on the document—I can give you a better example just some weeks ago. We are at war as U.S. citizens and Americans in Afghanistan and Iraq. We have Iraqis living in the United States. They are voting on the election where they don't live. And they are voting to make decisions here. We here are sending our soldiers from the Virgin Islands, Puerto Rico, Guam, and any other state to fight against these people.

There is no provision that you say that a Sunni can't vote or a Shiite can't vote. You say Iraqis. So the parties only have lived there for the rest of—and they are making decisions. Oh, wait. Are you saying that native Virgin Islanders as represented by Minority Leader Richards should have the same provisions to make them there.

Ms. BORDALLO. All right. Dr. Petersen, I have a couple of questions for you. Thank you, Mr. Bryan. First, are you comforted by

the fact that if the proposed constitution is adopted by the voters without any change, the courts would likely strike down the controversial provisions that you are asking us to change?

Dr. PETERSEN. I cannot speak for the court, but I know it probably will end up in court. Many of the citizens that I speak to are poised as we speak to challenge many of the provisions in the document. I would also like to point out that there is an ironic situation here where we have a present gubernatorial candidate that was not born in the Virgin Islands. And should he win the election in November, and this constitution is ratified in November election, he automatically becomes ineligible to serve. And so there is quite a bit of irony here, and I do believe that these provisions need to be addressed.

Ms. BORDALLO. My second question also to you, Dr. Petersen, you say that you believe that if the controversial provisions of the draft constitution are adopted, it would make it also impossible for the document to be ratified. On the other hand, you heard Governor deJongh urge us not to even edit the document because to do so would run contrary and counter to true local self-governance. What is your opinion of the position that the Governor is taking?

Dr. PETERSEN. Well, as I said near the end of my statement that I beg to differ because—

Ms. BORDALLO. Yes, you did.

Dr. PETERSEN.—once the constitution—once the document is returned to the people for the vote, they would have adopted the constitution as their own. And so whatever provisions were changed by Congress, which as Delegate Christensen pointed out, that the Congress does have a duty and a responsibility to uphold the United States Constitution and make whatever changes are necessary so that the document complies with the United States Constitution. So I believe that if it is returned to the people, modified, and it possibly would be voted in—and the changes that we are requesting are—there are many other things that we see that are improper or impractical with the document, but we believe those things can be changed once the constitution is ratified.

There are provisions within the document that provides for review within five years, and also there are areas for amendment to the constitution.

Ms. BORDALLO. I have always been of the philosophy, because I have sat on our constitution commission in Guam for a number of years, and I have always said, let's get the foot in the door.

Dr. PETERSEN. Yeah.

Ms. BORDALLO. And then once it is in, and we have a constitution, we can always repeal or add on to it. And like you said, in yours, every five years it would go before the people again for— isn't that what yours says, every five years for reauthorization?

Dr. PETERSEN. I think the first review is within five years, and then thereafter after ten years. I would also like to point out here that within the document itself—and I think if the document is adopted, that changes and amendments process does not include the Congress of the United States any longer. So once Congress approved—

Ms. BORDALLO. So it would be just before the people.

Dr. PETERSEN. Yeah. It goes to the people, and it is amended as provided therein.

Ms. BORDALLO. Very good. Thank you very much. And now I would like to turn it over to the representative from the Virgin Islands, Dr. Christensen.

Mrs. CHRISTENSEN. Thank you, Madame Chair. And before I ask my questions, I wanted to recognize the presence of Senator Shawn-Michael Malone, a member of the 28th Legislature. And if my memory serves me correctly, he took the measure first introduced by Senator David Jones in a prior legislature and introduced it in the last legislature that created the constitutional convention. So I wanted to recognize his presence.

I have some specific questions about the document itself. And anyone can answer, probably not all. But maybe two people can answer this question. Why after the first four documents had a provision for something akin to a chief financial officer was such an office not included in this document? After many people continued to talk about the need for a chief financial officer, and it has been clear since I introduced it twice in the Turnbull Administration and once in the deJongh Administration, got it out of the House, and have been consistently blocked in the Senate because of the non-concurrence of Governors which will probably continue into the future, why was it not included in this? Was it discussed and rejected, or was it not discussed at all?

Dr. HASSELL-HABTES. Delegate Christensen, this area was not discussed in the Fifth Constitutional Convention, not for CFO. What the convention recognized, what we thought was the concern for fiscal accountability, was the need for an auditor general. And the constitution provides for an inspector general who would have that responsibility. So we did not discuss the establishment of a CFO in this constitution.

Mrs. CHRISTENSEN. No. And I don't think that the prior ones had specifically necessarily a chief financial officer. The fourth had an auditor general. But it was my understanding that the duties were fairly similar and that they were concurrently monitoring the spending and the finances of government, not going back as an inspector general was. Now the current one would be an inspector general that goes back and reviews documents past.

Dr. HASSELL-HABTES. That is what we presently placed in this constitution, yes.

Mrs. CHRISTENSEN. OK, thank you.

Mr. BRYAN. If I might add, please.

Mrs. CHRISTENSEN. Yes.

Mr. BRYAN. I think your question is appropriate because if the delegates to the U.S. Congress right now could not have convinced the members of the committee or the Congress to put it in the Federal laws through the Department of the Interior to administer these things—and with the Governor who was sitting earlier, I think he was supportive before. After he got elected, I think he supported it. Just as he came here to testify against the constitution convention document for native Virgin Islanders, do you feel he wanted to protect him? He should have asked that that be included. He had opportunity long ago, and there is still the opportunity right here in the Congress to put it in place.

Mrs. CHRISTENSEN. Yes. We did pass it through the House on three occasions, but we could not get it through the Senate because it really requires—or it was required of us that the Governor in both instances, both in the Turnbull Administration and this Administration, concur, and they didn't get that concurrence, and so the Senate would not pass it. So it has been going up against a wall three times.

There has also long been a movement or a lot of discussion about municipal government, which many I think anticipated that the next constitution would provide for. And I realize you have some different governing structures on the island, but not true municipal government. Was that discussed and debated and rejected, or was it not a discussion at this convention?

Mr. EMANUEL. Thank you very much, Delegate de Lugo [sic].

Mrs. CHRISTENSEN. De Lugo?

[Laughter.]

Mr. EMANUEL. I think I have been reading too much history. Delegate Christensen.

Mrs. CHRISTENSEN. Well, you know, the past Congress, people were on the Hill just yesterday and had an even last evening, so OK.

Mr. EMANUEL. No. The Fifth Constitutional Convention did debate municipal government to a large extent, and there are provisions within the document that address that specifically.

Mrs. CHRISTENSEN. I see that there is some structure on each island, but not what I would really consider municipal government. But there is some attempt to have each island have a structure.

Mr. EMANUEL. What we did is we didn't want to legislate within the constitution. We felt that the constitution is supposed to provide broad parameters. We have a legislature. You can create commissions and so forth. So we put the principle in there in some detail, but we felt it was best to have each island determine for itself what form of municipal government it would like, and the legislature would eventually have to approve that.

Mrs. CHRISTENSEN. I see. Which leads me into my next question. Did you want to respond as well?

Mr. BRYAN. Yes. I wanted to put on record because we keep hearing individuals in different terms use the word municipal government, sub-district, and municipalities. And when I read what they wrote and brought to the convention for discussion and debate, those were sentiments clearly of apartheid. That is what they want to do. Look at the population and see what they wanted to have. Municipal government, sub-district, and the authority to change the laws when it comes to taxation—so basically, we almost end up another South Africa.

Mrs. CHRISTENSEN. Thank you for that response. But the issue of providing broad parameters bring me to my next question. And I would direct this to Dr. Hassell-Habtes. In the report by the Congressional Research Service, it is discussed that while it is not inconsistent with Federal law in any manner, mandating a 20-student class limit may prove to be inflexible to changing economic and demographic patterns over time. And while I understand the need to counter classroom overcrowding and really support small classrooms and reduction of the demand on our already-over-

extended educators, don't you think that this provision requiring a 20-student cap could possibly become restrictive over time, and aren't these provisions overly prescriptive for a constitution?

Dr. HASSELL-HABTES. Thank you, Delegate Christensen. The concern—I mean, the education and culture committee had many, many meetings, many testifiers, including the University of the Virgin Islands, the president, Dr. Ragster, the Board of Education chair. We see the need for smaller classrooms. The research bears us out on this. There are no ifs, ands, or buts. The problem in the Virgin Islands is we continue to overcrowd our classrooms, and then we want to have the teachers and the administrators of our schools at the same adequate yearly progress standards. They have to do exactly the same thing as other classes through the nations, throughout the nation, and that is a problem right there.

Right now, we are suffering in our territory. The crime—you may say it is crime, but I beg to differ. It starts with education. It starts with education in our classrooms, giving our students what is necessary and ensuring that they have a foundation within which they can get jobs and not be out on the streets killing each other. I understand yesterday there was another murder in St. Croix. This is what is happening, and it is a certain generation of males that are dying as a result of it. They are between certain ages.

We are actually suffering right now in the territory from January to now. The numbers have been increasingly one almost every day. And as a result, it behooves us to change to make sure that our future generations are well educated, have the foundation skills with which they can survive.

Mrs. CHRISTENSEN. I definitely agree with the intent of the provision, and I share deeply your concern. Two people were killed in St. Thomas the day before, and one in St. Croix yesterday as you said, and it continues. And education is a key part of resolving that issue. It is just I had a question about whether it was something that should have properly been in a constitution. But it is there, and if we were to consider changing anything in it, with taking what has been said to us here under advisement, that would not be one of the things we would ever consider changing.

Dr. HASSELL-HABTES. Thank you.

Mr. BRYAN. Could I comment on education?

Mrs. CHRISTENSEN. You have a comment on education?

Mr. BRYAN. Yes, ma'am. Thank you. I think Chairperson Bordallo would probably tell us that in the curriculum of education in Guam, the Guamanian children from the early age understand who they are, what they have contributed to the society, and the sense of pride in their native land. In the Virgin Islands, though, there is a law that is over 20 years old that require the Governors, the present one who was here and the others before him, and the Department of Education to teach the children of the Virgin Islands and the Caribbean the history of their ancestors and the greatness of their contribution so that they can understand who they are.

These activities are taking place because of the miseducation of the population of the children of the Virgin Islands that is continuing because it is only a particular grade or class of people that are being killed in a firearms situation. The minute a Caucasian

is killed, all the law enforcement, all the marshals, all the DEA and the ATF, they are around searching and stopping cars. As soon as a young black individual or Hispanic is killed, they drive as if nothing is unusual. You can have individuals showing more concern about the turtle, a snake, a lizard, and a dog and a cat, than they are concerned about the people of the Virgin Islands when it comes to education. So it is a Eurocentric educational curriculum that needs to be enforced so the children of the Virgin Islands that are involved in these things, like the children of Guam and other islands, can understand their greatness as opposing to not understanding who they really are supposed to be contributing to.

Ms. BORDALLO. I agree with your comments.

Mrs. CHRISTENSEN. Yes. And, I was taught at least the history of the Virgin Islands, maybe not the Caribbean, when I was even in Catholic school. And I think it is very important. You know, if you don't know where you came from, you will never figure out where you are going.

Dr. HASSELL-HABTES. Madame Chair, could I comment just one more thing on that? Because the problem that we have with education and teaching the history and culture of the Virgin Islands is that many of our teachers are coming to us from other jurisdictions, other places, and do not know the culture and history. I know my fellow delegate, Gerard Emanuel, and myself just on Saturday afternoon provided training through the board of education on cultural education and the mandate to infuse culture within the curriculum to the teachers because the teachers also do not have the time to research this history and to get it into the classrooms.

So what we do as trainers of these teachers in culture and history is provide them with the necessary materials. But that is why education is so important.

Mrs. CHRISTENSEN. It is.

Ms. BORDALLO. Yes. If I could inject just a minute. Yes, in Guam our education system—you know, right after the war, we got kind of—well, it was, speak English, speak English. Of course, we have a language in Guam. So now it is mandatory that we teach the Chamorro history and our language. So that is one good thing, and we do have teachers that are trained in the culture. And they are placed in all of the schools. So that is a good thing, although I think that there should be a bit more of it, but certainly we are starting on it. And now we are trying to revive it because our youth, you know, we speak English in Guam. And our parents, there is a generation now—we are about three or four generations from the days right after the war. And children now, they can speak a little of the language, but certainly not fluently.

Mrs. CHRISTENSEN. Thank you. At least yours is being enforced. So that is really helpful. Madame Chair, if I could just ask two brief questions. By again, any one of the delegates, or maybe all might be able to answer because I think the answers could be very brief.

How would the delegates feel about reconvening the Fifth Constitutional Convention to address the three highlighted areas in Mr. Cedarbaum's testimony?

Mr. BRYAN. You said reconvene?

Mrs. CHRISTENSEN. And I welcome—how would you feel?

Mr. BRYAN. You said reconvene?

Mrs. CHRISTENSEN. To reconvene. The same question I had asked to the previous panel pretty much. How would you feel about reconvening to address the three areas or reconsider the three areas of concern that were highlighted by the assistant attorney general's testimony?

Mr. BRYAN. I don't agree that we need to reconvene to address what the Justice Department said. As I said previously, the final arbiters of this decision is not only a constitutional issue that goes to other higher, whether the U.N. or the Hague. But I say if you are going to reconvene it, you must have other stipulations that only people of the Virgin Islands be delegates, and substitutes those that are the Virgin Islands with people of the Virgin Islands and only require that the people of the Virgin Islands because the difference between people of the United States and people in the United States. The Iraqis are in the United States, but they are of Iraq. So we want to make sure that we have the same privilege and rights to represent our future of the Virgin Islands.

Mrs. CHRISTENSEN. Any other comment about reconvening?

Mr. BRADY. I will respond, Delegate Christensen. I wouldn't be optimistic that it would be successful. But I do think, as perhaps even as can be seen from the fact that 11 delegates signed a letter to yourself and President Obama—

Mrs. CHRISTENSEN. And could you explain how five voted against and eleven signed the letter?

Mr. BRADY. Well, there are only 25 who voted in favor, 25 who voted total. The count was 20 to 5, 20 in favor, 5 against. Some of the persons who—I can't speak for others, of course, but some of the people who signed that letter of the 11 did vote in favor. Some had—one had abstained, and several had been absent. But I think that there has been a—the vote was taken in a very rushed fashion as the clock was ticking. We were at the 11th hour, and we had to say yea or nay.

Mrs. CHRISTENSEN. Don't you know moving the clock back?

Mr. BRADY. That is a good idea. We didn't think we had that authority. We didn't have the control-the-clock hands. But in any event, I think people have rethought. I have concern that if we are going to be able to get a two-thirds majority, perhaps a two-thirds majority would not vote in favor of these particular provisions today. So in that sense, I don't know how—

Mrs. CHRISTENSEN. It may never happen, but I was just wondering if there were any thoughts about whether it would make any sense to reconvene to consider those.

Dr. HASSELL-HABTES. Delegate Christensen, I just wanted to say I got a copy of the letter to President Obama, and he is saying 11 signatories on there, but I am seeing only seven. I am seeing only seven signatories on that document. So although they may have added other people's names there, the signatories are not on that letter.

Dr. PETERSEN. The response to that is—

Dr. HASSELL-HABTES. I am concerned, if we are going back to reconvene the convention, only because the delegates were united when we voted accordingly for this constitution. And to reconvene is going to take us back to the beginning of the convention, 2006,

to start all over again to pull them together because the biggest problem in the beginning was getting everybody together. And we also were not accorded, as testimony from our president of the convention stated, we were not accorded the financial, you know, remuneration to do so. So it really would take us back.

Mrs. CHRISTENSEN. Let me just ask the last question, and then you could—

Mr. BRYAN. Before you go to the last question—

Mrs. CHRISTENSEN. I am going to ask it, and you can answer both—

Mr. BRYAN. No. I want to explain the situation with the signatures because the signature document that originally was sent did not have all ten signatures in there. One of the delegates that didn't sign was Governor Charles Turnbull. He was the only delegate of the 11 that didn't. They sent seven signatures first, and then thereafter they submitted another page with 10 signatures, with individuals who were not even present, and even some who hardly attended the convention meetings. So it is to me when we do that, you are trying to say that if the Supreme Court renders a decision, before the courts follow or enforces a Supreme Court decision, it cannot change the Supreme Court decision until there is a Supreme Court majority again. What we are trying to make or suggest is that you allow the minority dissenters have an opportunity again to change what the 20 delegates did in the majority.

Mrs. CHRISTENSEN. I guess what I was trying to suggest is we could probably avoid a long, drawn-out court battle if the convention reconvened just simply, and those three areas, and at least reconsider them. Let me ask the last question.

Dr. HASSELL-HABTES. That is a possibility, Delegate Christensen. There is a possibility with that. I must say, you know, many of the delegates had discussed some component of that, knowing there would be major problems within some issues. So there is a possibility, yes.

Mrs. CHRISTENSEN. Let me ask the question. And I know that Mr. Emanuel and others might want to answer that first one. But I am just going to ask the last question, and you could answer both if you want to. I can kind of try to wrap it.

This is our fifth try. I am one of those Virgin Islanders that want us to have a constitution. I want a constitution that will be able to garner the number of votes from the voters to have it pass. So do you feel that this document sent back as it has been sent to us, sent back without any changes, will pass? Because many people do not feel that way. And are you willing to take the risk of letting all of your hard work over these months, over a year, come to naught? That is my last question.

Mr. EMANUEL. Delegate Christensen, this time I got your name correct. That is a very important question. The crux of the matter is who are the people of the Virgin Islands. Who is the self in the self-determination? Because the Enabling legislation that was passed by the legislature said that this is a major step in a process of self determination.

The problem I have and the problem that existed with the two previous conventions, the third and the fourth, is that the same requirements for voting in a regular election were applied to voting

in constitutional referendum. And I don't know what this body feels, but I think that is an injustice. All of the historical background that I have submitted to this body clearly shows a singular thread that consists of a body of people in the Virgin Islands who have historically been denied their right to self-determination, their right to write a constitution, for hundreds of years.

While that occurred, many people were allowed to migrate to the Virgin Islands. And the vast majority, who never had a chance to exercise this right, had absolutely no say in who came into the Virgin Islands, who was accorded citizenship, and now who is supposed to have the same right of those people who were historically denied a right to choose for themselves. Now everybody, the descendants of the colonizers as well as everybody else is mixed up in this pot and is supposed to make an act of self-determination?

That is what Congress has to address. In my testimony, I said that—and this is in the written testimony—that we are not trying to abrogate U.S. sovereignty, but we would like to determine what the parameters of our status is. Justice can't do that. The President doesn't do that. The only legally authorized body within the United States to do that is the Congress. We are a creature of Congress. And I don't want to leave here without knowing what the sense of Congress is because everybody keeps saying this is unconstitutional, this is violating that law, this is violating this law. Congress makes the law. There is no other body that makes the laws. We need to hear from Congress. At least I would like to hear from Congress because everybody has an opinion but the only one that counts in terms of the territorial clause is the Congress of the United States.

So the problem I have with going back or having any constitutional convention is who is going to vote. I testified before the United Nations in 1989, when you were boss as a commissioner on the status commission. That process was illegitimate because it allowed people to vote in that process who were not part of the people of the Virgin Islands as defined under international law. A resolution that was mentioned by my co-delegate, Adelbert Bryan, 35-118, requires the administering powers who have territories like the Virgin Islands to protect these territories from the disruption of their territorial integrity by the migration of outside settlers.

The outside settlers doesn't just mean non-citizens. Anyone coming into this island territory is an outside settler. And when they come there, we have a very small electorate. Historically, they have affected all of our rights to self-determination. They thwarted the Third Constitutional Convention. They thwarted what happened in the Fourth Constitution. And if allowed, that will happen in the Fifth. And that is the issue that we cannot run away from. It is not that the people of the Virgin Islands can't make a decision or our constitution will not be adopted. It is who legitimately and historically has the right to make that decision?

I don't know of any person in Israel, any Jew, that would allow any descendant of a Nazi, whether he believed in the philosophy or not, to come and vote on the right of self-determination of Jews. So why is it that the people of the Virgin Islands are supposed to be so accommodating and be held to a higher standard and let everybody else make a decision. That is wrong, and that is what this

Congress has to address. This Congress has to address whether or not the people of the Virgin Islands, who Congress defined as those natives who were not citizens or subjects of any foreign country—those are the people that Congress made citizens in 1927. That is the group of people who has the inalienable right to exercise these things, and that is the group of people that should be the only ones voting on constitutions, dealing with political stuff.

Until Congress addresses that pursuant to the United States obligation under the articles, under the charter of the United Nations, and on the resolution 1541, where this government has to respond annually to what it is doing to allow the people of the Virgin Islands—and when they say “of,” the people of the territories, they are not talking about visitors and transients and anybody who happens to come there. They are talking about the people who are involuntarily colonized.

Mrs. CHRISTENSEN. I hear your position. And I need to give the others a chance to just respond because we are running close to the end of the time.

Dr. PETERSEN. Thank you, Delegate—

Mrs. CHRISTENSEN. Dr. Petersen, I will give you the last word. I am going to give you the last word.

Dr. PETERSEN. I would like to address your thought about reconvening. And I don't believe that this—and I think you meant the current convention reconvening, right?

Mrs. CHRISTENSEN. Yes.

Dr. PETERSEN. Yeah. I don't think this body of 30 could come to a conclusion different than it did because when you think about it, we actually spent over a year in actual time working on this. And we just keep going round and round. So I think we have exhausted all avenues.

As far as one of the questions that was asked before about the difficulty in reaching the two-thirds majority, it was extremely difficult. I don't think anyone could deny that. You could look at the transcript and see that throughout the last few months of the convention, I noticed that every vote that was taken was anywhere like 12 to 13 or 15 to 10. It never got up to like a vast majority of the voted on any of the issues. And that sort of signaled to me that when it came to the final vote, that they were going to be pretty much split.

And in actuality, it was pretty much split. Of the 25 delegates that were there, 15 initially voted for it, and 5 voted against, and there were 10 absent on the floor. And our rules required or allowed for telephone voting, and they contacted several of the other delegates and were able to get them to vote yes, 5 to vote yes to make the 20.

Basically, what happened, the five that voted against, and then there were another five or absent or one or two abstentions, some of those that voted for it immediately the next day called and had quite buyer's remorse. They called me, they called several people, and they said, oh my God, how did I do this. Several of the other candidates that voted on the evening of the vote voted for it, in their two or three minutes that they had to talk about how they felt, expressed varying views as to why they were going to vote for it. They were against it, but they were voting for it because there

had been, in the case of Governor Turnbull—had been in all five conventions, and this was possibly his last one, and he wanted to see a document go through, not that he agreed with it, but he wanted to see something, anything, come to the floor.

Several of the other delegates that expressed buyer's remorse the next day said that they voted for it because they were sort of pressured or told that they were not true Virgin Islanders and just got elected because they were residents in the Virgin Islands. And they said, well, to hell with it, I will vote for it, just to give it to the people.

Mrs. CHRISTENSEN. I am going to have to stop there because the Chairwoman has been very, very patient.

Dr. PETERSEN. Yes.

Mrs. CHRISTENSEN. Did you want to answer the question, Attorney Brady, if the Chair will allow? If you don't, I will go to Dr. Habtes.

Mr. BRADY. I don't have an answer.

Dr. HASSELL-HABTES. Thank you, Delegate Christensen. I am very, very concerned because we have worked too hard to give this Fifth Constitutional Convention up to just anybody. To tell you the truth, I honestly believe, Delegate Christensen and Madame Chair, I honestly believe that anything that we do with the people of the Virgin Islands on this constitution shouldn't just be sent back to them for a referendum. We have to educate them. Even up to my coming here for testimony, there were community members who called and said to me, that Organic Act that you all say is governing us, I have never seen it. I have never read it. And I would rather have the constitution than an Organic Act from 1936, revised in 1954. But that just tells me they never read it. They don't even know what is in there to have voted for four constitutional conventions to, you know, not have a constitution. And I really feel this is our time.

If Congress feels that they need to send it back to the people, then that is what Congress should do. I really feel, however, that we should take some time with our people and educate them on the component parts. Don't just send it back. Anything that we do with our people—\$500,000 was spent on an education campaign before the constitution even began. We didn't even get that amount toward the writing of the constitution. And I feel it has been a hard, strong struggle, and we cannot give it up. As our Chairperson of this committee said for Guam, at least get our foot in the door. At least get our foot in the door, and then we can do changes. Thank you.

Mr. BRYAN. But Delegate Christensen, could I have a minute, or less than a minute, please, to express something? Madame Chair, sorry. Excuse me. You know, I am hearing this number being playing around, whether it was 20 delegates out of 30. And I think 20 is representing two-thirds as opposed to the majority; 21 really. But in any event, in a five-four decision for the Supreme Court, that is still a majority. A nine-three decision for the Supreme Court is still a majority. What some of the delegates, individuals, are not looking at—this constitution—I don't know about Bryan or Mr. Brady or anybody sitting up there—is about the future generations of the Virgin Islanders. As an example, if Mr. Brady from Chile,

as an example, son married to my daughter, a native Virgin Islander or an ancestral—or what grandchildren are qualified as native Virgin Islanders or ancestral native. If Mr. Modeste and Delegate Christensen from Antigua had some kids, moved to the Virgin Islands, have children born in the Virgin Islands, those children too are also native Virgin Islanders. And if they can check farther, they may find that one of their parents or grandparents was living in the Virgin Islands prior to 1927 and 1932.

So I am saying don't let us get caught up in the individuals here. Look at what is the future because when the United States wrote their Constitution, the Presidents before were not native Americans. They put a provision in there for future Presidents to be natural-born Americans. But he is still known even today as the President of the United States. Thank you.

Ms. BORDALLO. I thank all of the members of the second panel. I feel you have been giving us very valuable input on this. We have been able to hear a little background, who sits on the commission, how long you have worked on it and so forth. And that is going to be very, very important when Congress decides how we are going to go forward.

So I want to thank you all very, very much. I truly did enjoy this, listening to it. And it just makes me think of back home because we have some of the same problems. We spent \$10 million over a period of 10 years trying to work on our commonwealth status, and now we are going to have to start over again because we dropped the ball for a few years, and it is something that we have just got to come to grips with. And I will repeat it again. That is what happened to Guam. We wouldn't compromise on some of the provisions. And the Federal Government—and we walked out, and it wasn't the right thing to do.

I didn't walk out, but the Chairman did. So I just want to thank you all very much. And I work very closely with Dr. Christensen, and we will continue to do so.

I want to thank you again. And as members of the Subcommittee may have some additional questions for you, we would like to ask you to respond to these in writing. The hearing record will be open for 10 additional days for any other information that we may want.

So again, there being no further business—

Mrs. CHRISTENSEN. Madame Chair, we would still accept written testimony from residents of the Virgin Islands?

Ms. BORDALLO. Yes, that is correct.

Mrs. CHRISTENSEN. In that 10-day period?

Ms. BORDALLO. The hearing record will be open for 10 days. And if others that were not part of the panels today wish to send testimony, absolutely. They will be included.

So there being no further business the Subcommittee, the Chair again thanks the members of the Subcommittee and all of our witnesses from both panel one and panel two. The Subcommittee now stands adjourned.

[Whereupon, at 4:46 p.m., the Subcommittee was adjourned.]