

# TESTIMONY

**BEFORE THE LEGISLATURE OF THE VIRGIN ISLANDS**

**COMMITTEE ON A WHOLE**

**May 13, 2024**



**CAROLINE F. FAWKES**

**SUPERVISOR OF ELECTIONS**

**ELECTION SYSTEM OF THE VIRGIN ISLANDS**

1 **INTRODUCTION**

2 Good afternoon, Honorable President Novelle Francis, Jr,  
3 distinguished members of the 35th Legislature, members of the press,  
4 the viewing and listening audience. I am Caroline Fawkes,  
5 Supervisor of Elections, of the Election System of the Virgin Islands.  
6 It is an honor to appear before you today, to provide Testimony on  
7 District Court’s Case No. 3:22-cv-0049 ruling on the  
8 unconstitutionality of sections Title 18 Virgin Islands Code,  
9 specifically §232; §301(a); §303(a-c); §304(a); §305; §306(a); §307;  
10 and §342.

11 The Memorandum of Opinion dated January 10, 2024, by District  
12 Chief Judge Robert A. Molloy concluded based upon the foregoing,  
13 the Court finds that 18 V.I.C. § 301(a), §303(a)-(c), §305, §306(a),  
14 §307, §342 and the first sentence contained in 18 V.I.C. § 304(a)  
15 impermissibly infringe upon Plaintiffs’ freedom of association  
16 guaranteed by the First Amendment of the United States  
17 Constitution by imposing severe burdens upon their internal party  
18 operations.

19 Further, the Court finds that Defendants have failed to demonstrate  
20 both that the said statutes serve a compelling government interest

21 and are narrowly tailored to achieve that compelling interest.

22 Consequently, those statutory provisions are unconstitutional and

23 void. The Court also finds that the second sentence contained in 18

24 V.I.C. § 232 is not only unconstitutionally vague, but also violates

25 constitutional due process by failing to provide a means of redress.

26 Accordingly, the provision is void. Finally, the Court finds that 18

27 V.I.C. § 301(c)-(d), to the extent the provisions allow a Virgin Islands

28 political party to use its national affiliates' trademarked symbol,

29 emblem, or insignia without the approval of the owner of the

30 trademark, are preempted by the Lanham Act.

31 Accordingly, the Court will deny Defendants' motion for summary

32 judgment and will grant, in part, and deny, in part, Plaintiffs'

33 motion for summary judgment.

34 The sections of Virgin Islands Code Title 18 laws were stricken as

35 unconstitutional therefore, they are null and void. As the

36 Supervisor of Elections, I must follow the District Court Legal

37 Opinion unless a higher Court overrules the decision. The Board of

38 Election voted on March 26, 2024, to send a request to the Attorney

39 General Office to obtain a response whether they should file an

40 appeal of said ruling. This letter was sent on April 15, 2024, to date  
41 no response has been received.

42 The impact of this Legal Opinion as stated on pages 11-15,  
43 particularly referring to Chapter 11, section 232. § 232. Primary  
44 elections. Party primary elections shall be held in the Virgin Islands  
45 on the first Saturday of August for the purpose of choosing  
46 candidates for nomination to public offices to be voted for at the  
47 ensuing general election. The Board of Elections will be responsible  
48 for certifying the process to be used by any political party to select  
49 party officers and candidates for public office. This law was written  
50 in 1998 and amended a few times, the last being on May 31, 2012.  
51 No Primary Election can be conducted by the Office of the  
52 Supervisor unless the Legislature address the issue and make any  
53 necessary changes to the law that will allow the Office of the  
54 Supervisor to conduct the elections, otherwise, there will be legal  
55 challenges. The Elections System of the Virgin Islands does not  
56 have the funding for any non-foreseeable legal consequences  
57 brought by the unconstitutional ruling of these particulars of the  
58 Virgin Islands code.

59 Many think the Primary Elections is in August therefore, we have  
60 time, well we do not. The Casting of Lots for the Primary is May  
61 31<sup>st</sup>. That is in fifteen working days, iaw with VIC 18 Sec 351.

62 Unless we received laws addressing the Primary, this will have to be  
63 postponed or cancelled.

64 In summary, the Supervisor of Elections duty and responsibility are  
65 to follow constitutional laws.

66 Aspirants are reminded that the first day to submit Nomination  
67 Petitions and Papers is Tuesday, May 14, 2024, beginning at  
68 12:00 PM. The deadline to file is Tuesday, May 21, 2024, before  
69 6:00 PM. Delegates to the Sixth Constitutional Convention must  
70 also file their nomination papers by the above deadline.

71 President Novelle Francis, Jr., Members of the 35th, Legislature for  
72 thanks for inviting me to present Testimony on District Court's  
73 Case No. 3:22-cv-0049 the ruling on the unconstitutionality of  
74 sections Title 18 Virgin Islands Code, specifically §232; §301(a);  
75 §303(a-c); §304(a); §305; §306(a); §307; and §342.

76 I am prepared to respond to any questions you may have.

77 Your Voice Your Vote, and Your Vote is Your Voice!