

TESTIMONY

BEFORE THE LEGISLATURE OF THE VIRGIN ISLANDS

COMMITTEE ON A WHOLE

May 13, 2024



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

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

66 President Novelle Francis, Jr., Members of the 35th, Legislature for
67 thanks for inviting me to present Testimony on District Court's
68 Case No. 3:22-cv-0049 the ruling on the unconstitutionality of
69 sections Title 18 Virgin Islands Code, specifically §232; §301(a);
70 §303(a-c); §304(a); §305; §306(a); §307; and §342.

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

72 Your Voice Your Vote, and Your Vote is Your Voice!