



Supreme Court of the Virgin Islands

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September 27, 2023

Honorable Diane T. Capehart, Senator
Chair, Committee on Rules and Judiciary
35th Legislature of the Virgin Islands
3022 Est. Golden Rock
Christiansted, VI 00820

Re: Bill No. 35-0032

Dear Chair Capehart and Members of the Committee on Rules and Judiciary,

I write to you on behalf of the Judicial Branch of the Virgin Islands to request that Bill No. 35-0032 be amended to exclude the Judicial Branch, such as by removing the reference to the Judicial Branch in Internal Section 2(a). As you know, an independent, fair, and impartial judiciary is an indispensable component of our justice system and society. The people of the Virgin Islands must always remain confident that the courts of the Virgin Islands are comprised of men and women of the highest integrity, who will interpret and apply the law independently, impartially, and competently, without regard to partisan politics or any other inappropriate consideration.

To maintain the public trust and to maintain confidence in our legal system, the Supreme Court of the Virgin Islands has promulgated ethical rules to govern all those employed in the Judicial Branch. The scope of those rules varies depending on how integral each position is to the bread-and-butter function of the courts: adjudicating cases. Judicial officers are bound by the Virgin Islands Code of Judicial Conduct, codified as Supreme Court Rule 213. The Code of Judicial Conduct establishes the highest and strictest standards of conduct to ensure that judicial officers always maintain the dignity of judicial office and avoid both impropriety and even the appearance of impropriety in their professional and personal lives. As such, Canon 4 prohibits a judicial officer from engaging in virtually any political activity and requires that a judicial officer resign upon becoming a candidate for nonjudicial elective office.

While court staff are not subject to the same virtually complete prohibition on political activity imposed on judicial officers, they too remain subject to ethical rules. Judicial law clerks, who directly assist judicial officers in performing their adjudicative functions, must abide by the Virgin Islands Code of Conduct for Law Clerks, codified as Supreme Court Rule 103. Law clerks must, among other things, refrain from open political activity, including running for political or public office, endorsing candidates, or soliciting funds. And all other Judicial Branch employees must abide by the Virgin Islands Code of Conduct for Judicial Branch Employees, codified as Supreme Court Personnel Rule 5.6, which among other things precludes political activity during work hours, prohibits the use of Judicial Branch vehicles or other equipment in connection with political activity, requires that any political activity such employees engage in does not give

the impression the Judicial Branch endorses political candidates or supports political causes, and mandates that Judicial Branch employees take a leave of absence if seeking elective office and must resign if elected prior to assuming office.

Bill No. 35-0032, if enacted in its current form without excluding the Judicial Branch from its provisions, threatens the independence and public perception of the courts of the Virgin Islands. It is unlikely that the people of the Virgin Islands will believe that the Judicial Branch remains impartial and divorced from politics if judicial law clerks or other court staff are permitted to openly endorse candidates for elected office, solicit campaign funds, or even run for public or party office themselves. It also creates the potential for conflicts of interest—both real and perceived—in individual cases if those law clerks or other staff work on cases that align with their political or campaign activities. *Cf. Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868 (2009). These concerns are exacerbated when—as here—Bill No. 35-0032 purports to permit Judicial Branch employees to engage in these activities with virtually no restrictions and without even requiring that they be disclosed.

Thank you for your attention to this important matter. In writing this letter, I emphasize that the Judicial Branch takes no position on the merits of any other aspect of Bill No. 35-0032. Rather, our concern is only with the inclusion of the Judicial Branch in this bill, which if not changed threatens the independence and public confidence of our judiciary. Again, I urge that this Committee amend Bill No. 35-0032 to exclude the Judicial Branch. This could be accomplished in a multitude of ways, although the easiest would be to simply remove the express reference to the Judicial Branch in Internal Section 2(a).

Sincerely,



Rhys S. Hodge
Chief Justice

cc: Honorable Debra S. Watlington, Presiding Judge
Regina D. Petersen, Administrator of Courts