



Testimony

Before the Committee on Government Operations, Veterans' Affairs, and Consumer Protection

Testimony on Bill No. 36-0071: An Act amending title 18 Virgin Islands Code section 232 to provide the process for political parties to choose their nominees for public office. Proposed by Senator Alma Francis Heyliger

Submitted by Carol M. Burke, State Chairwoman, Democratic Party of the Virgin Islands

Before the Committee on Government Operations, Veterans Affairs, and Consumer Protection, Legislature of the Virgin Islands, Capitol Building, Charlotte Amalie, V.I. 00801 | August 8, 2025

Good morning, The Honorable Avery Lewis, Legislative Secretary and Chairman, The Honorable Ray Fonseca, The Honorable Alma Francis Heyliger, The Honorable Novelle E. Francis, Jr, The Honorable Kenneth L. Gittens, The Honorable Franklin D. Johnson, and The Honorable Carla J. Joseph. I also want to recognize other distinguished members of the 36th

Legislature who are present with us today. Good morning to all of you, and my Virgin Islands community, and especially the dedicated employees of this government and members of the Democratic Party of the Virgin Islands. I am Carol Burke, Chairwoman of the Democratic Party of the U.S. Virgin Islands.

Thank you, Chairman Lewis and Members of the Committee, for the opportunity to speak to Bill No. 36-0071 — a measure whose implications go beyond policy and deeply into the pulse of our democracy. I come before you today not only as the Chairwoman of the Democratic Party but as a citizen committed to the principles of transparent government operations, legal integrity, and protection of public trust, as a vigilant advocate for electoral integrity.

At the heart of this testimony is a call for accountability, clarity, and meaningful legislative action — especially as it pertains to the landmark ruling by Judge Robert Molloy on the August 2024 primary election and beyond, and events leading up to it and its implications for governance in the Virgin Islands.

The sanctity of our democratic process is rooted in transparent governance, faithful adherence to statutory mandates, and public trust. Title 18 of the Virgin Islands Code clearly states that party primary elections shall be held on the first Saturday of August. Despite certain federal rulings that addressed specific internal party governance issues, the statutory requirement for a primary remains fully enforceable.

An issue is not just the administrative handling of our elections, but the absence of clarity, responsiveness, and leadership from this body. The recent judicial ruling has prompted confusion and concern throughout the Virgin Islands. Yet rather than prompt swift legislative engagement, it has been met with silence – until now, one year and seven months later.

For too long, the Board of Elections and the Supervisor of Elections have overreached in the affairs of local political parties, and thankfully, Judge Molloy’s landmark ruling has brought an end to that practice. Today, I am compelled to address the critical role of political parties and government in planning and executing primary elections, and the direct impact of the ruling in *Case No. 3:22-cv-0049* by Chief Judge Robert Molloy of the District Court of the Virgin Islands.




Judge Molloy’s decision—invalidating the second sentence of Title 18 V.I.C. § 232 as “unconstitutionally vague” and in violation of due process—has placed our electoral framework in flux. While the ruling reaffirms the constitutional autonomy of political parties, it also creates an urgent need for legislative clarity so that parties like ours can fulfill their responsibilities without legal ambiguity or procedural obstruction. This committee meeting is the perfect opportunity to begin to reset and clarify the standards governing the role of political parties in primary elections. This is a pivotal moment—one that allows us to reaffirm our commitment to constitutional principles and electoral integrity.

I also wish to recognize the Republican National Committee and the Republican Party of the Virgin Islands for their legal challenge against the Virgin Islands Board of Elections and the Supervisor of Elections. Their lawsuit resulted in a decisive ruling by Chief Judge Robert Molloy

that struck down several provisions of Title 18 of the Virgin Islands Code as unconstitutional. This ruling affirmed that political parties must be free to govern their internal affairs without undue interference from the government, and it has opened the door for all parties—Democratic, Republican, and others—to reassert their autonomy and responsibility in the electoral process.

While the ruling created immediate challenges, it also presents a rare opportunity: to build a more transparent, constitutionally sound framework for primary elections that respects the rights of political organizations and empowers voters. As Chairwoman of the Democratic Party of the Virgin Islands, I am committed to working collaboratively with all stakeholders to ensure that our next primary election meets both the letter and spirit of the law.

Here's what triggered the ruling:

-  **Government Overreach:** The Election System had been enforcing laws that allowed it to regulate internal party matters—such as the structure, size, and timing of organizational meetings. This included dictating that primaries be held on the first Saturday of August and certifying how parties selected officers and candidates.
-  **Constitutional Challenge:** The plaintiffs argued that these laws infringed on their right to freely associate and organize without government interference. They cited instances where the Election System's actions disrupted their participation in national party activities, including the RNC's 2016 and 2020 organizational meetings.
-  **Judge Molloy's Decision:** The court found multiple sections of Title 18 unconstitutional, ruling that the government cannot dictate how political parties organize or select their leadership. The law's vague language—especially around terms like “certify”—was deemed to violate due process.

These provisions did not protect voters. They marginalized them. That is why I — as Chairwoman of the Democratic Party — proudly and publicly endorse the lawsuit against the Election System, not as a political gesture, but as a commitment to fairness, transparency, and constitutional clarity. Additionally, the legislation before us is not a partisan tool. It is a procedural compass — one that returns accountability to elected bodies, and autonomy to political parties, while protecting the voters who depend on both. I stand ready to assist this Committee, the Election System, and fellow party leaders in implementing this framework swiftly and lawfully.

Today, we confront a legislative gap that has caused confusion and cast unnecessary doubt on our electoral process. The recent ruling clarified that the Board of Elections may not certify political parties' internal nominating processes — but it did not ban primary elections themselves. And yet, on May 13, 2024, testimony offered by Supervisor Caroline Fawkes interpreted that ruling in a manner that disrupted the democratic rhythm of our territory.

The Democratic Party's ad hoc committee later confirmed that the Supervisor's interpretation was erroneous and that the primary should proceed. This misinformation compromised public understanding, delayed critical planning, and potentially disenfranchised voters — violations not just of good practice, but of voters' trust in the election processes.

Oversight bodies such as this Committee must demand accurate legal analysis and a robust communication strategy to protect the rights of voters — the very consumers of public governance.

Compounding this confusion was a parallel legal battle between **Supervisor of Elections Caroline Fawkes** and the Board of Elections. The Superior Court dismissed her lawsuit, ruling she lacked standing to sue — a decision that spotlighted vague statutes and institutional dysfunction.

This episode illustrated:

- A lack of coordination between election authorities.
- Conflicting interpretations that left voters uncertain.
- An urgent need for clearer legal pathways for resolving disputes among election officials.

The public watched these events unfold with growing skepticism — unsure who to trust, what rules applied, and whether their vote was truly secure. As lawmakers, you must uphold your responsibility to preserve the democratic process, even in the face of administrative misdirection. The people of the Virgin Islands deserve elections — not excuses.

Bill No. 36-0071, introduced by Senator Alma Francis Heyliger, restores that rhythm. This bill reasserts the Election System’s rightful role in conducting primary elections, while respecting party autonomy. It does not force conformity. It provides options. A political party may choose to opt out of the public primary, provided it outlines its nominating process by January 10 of the election year. Otherwise, the Election System will proceed with the primary on the first Saturday of August.

What this bill accomplishes is simple, elegant, and essential:

- It prevents ambiguity from weakening voter confidence.
- It holds political parties accountable to timely, transparent procedures.
- And it places the Election System where it belongs — facilitating democracy, not obstructing it.

1. **Analysis of Bill No. 36-0071**

Bill No. 36-0071 seeks to address the legal vacuum created by Judge Molloy’s ruling. However, the current draft lacks clarity in several areas:

- **Ambiguity in Definitions:** Terms like “certify,” “recognize,” and “validate” are used without statutory definitions, risking future legal challenges.
- **Insufficient Separation of Powers:** The bill does not delineate the roles of the Supervisor of Elections, Board of Elections, and political parties in conducting primaries.

- **No Safeguards for Voter Access:** The bill does not include provisions to ensure that voters are notified of changes to primary procedures or party processes.

Without these elements, the bill may fail to restore public confidence or withstand judicial scrutiny.

2. **Recommended Language to Strengthen Bill No. 36-0071**

To enhance the bill's legal durability and operational clarity, I recommend the following additions:

Add Clear Definitions

Include a section defining key terms:

text

"Certify" means the formal acknowledgment by the Board of Elections that a political party's primary process complies with applicable public election standards.

"Primary Election" means a publicly administered election for the purpose of nominating candidates to appear on the general election ballot.

"Party Process" means the internal procedures used by a political party to select officers or candidates, not subject to government oversight unless voluntarily submitted.

Clarify Roles and Responsibilities

Add language such as:

text

The Elections System shall administer primary elections for recognized political parties upon request, provided that the party submits its process for candidate selection no later than 90 days prior to the scheduled primary date.

Protect Voter Access and Transparency

Include a public notice requirement:

text

The Elections System shall publish notice of all scheduled primary elections, including participating parties and candidate eligibility criteria, no later than 60 days prior to the election date.

To enhance the bill's legal durability and operational clarity, I recommend the following additions:

Recommended Enhancements to Bill No. 36-0071



While I fully support the structure and intent of Bill No. 36-0071, I respectfully propose additional provisions to safeguard transparency, voter trust, and procedural integrity:


1. **Public Disclosure of Opt-Out Procedures** Political parties opting out of the primary should be required not only to notify the Supervisor of Elections, but also to **publish their nominating procedures on an accessible public website** by the January 10 deadline. This ensures voters and prospective candidates are informed in advance.
2. **Minimum Standards for Internal Nomination Processes** Any internal party nominating procedure should adhere to baseline standards of democratic practice. These might include:
 - An open candidacy period for party members
 - Use of a secret ballot for member voting
 - Independent oversight of vote tabulation
3. **Public Notice of Opt-Out Decisions** The Election System should issue formal **public notice by February 1** identifying which parties will or will not participate in the primary. This prevents voter confusion and ensures complete transparency.
4. **Contingency Protections for Legal Challenges.** To protect the election calendar, the bill should empower the Electoral Calendar to proceed with scheduled primaries **unless a court issues a specific injunction**. Legal uncertainty should not paralyze our democratic schedule.
5. **Post-Election Reporting:** Add a requirement for the Supervisor of Elections to submit a **post-election report** to the Legislature detailing:
 - Parties that opted out
 - How their nominations were conducted
 - Any irregularities or procedural challenges observed
 - in how their nominations were conducted

These additions would preserve the balance between party independence and public confidence. We must not just legislate to fix today's confusion — we must also fortify tomorrow's elections.

Honorable members of this committee, Bill No. 36-0071, while it is a commendable start, by itself, does not satisfy Judge Molloy's ruling, which underscores the need for legislation that respects constitutional boundaries while ensuring operational clarity. Bill No. 36-0071 is a step in the right direction, but it must be fortified with precise language and voter protections to restore confidence in our electoral system. It requires statutory reform. We need Title 18 to be revised in a way that preserves the autonomy of political parties while providing the Elections System with a clear framework that respects due process and avoids ambiguity.

To that end, we respectfully call on this Committee and the 36th Legislature to:

-  **Revise Title 18** to clearly define the government's role in primary elections—within the bounds of constitutional law.
-  **Support political parties' autonomy** in their organizational meetings and candidate selection processes.

-  **Establish a workable timeline** that allows the Election System and political organizations to prepare without confusion or delay (to protect voters from last-minute disruptions and confusion)

Let me be clear: this is not about partisan interest. It is about preserving the democratic process and ensuring that every voter in the Virgin Islands has the opportunity to participate in fair and lawful elections. Our party is ready and willing to collaborate with elected officials, legal counsel, and the Elections System to develop solutions that respect constitutional protections while safeguarding electoral integrity. To that end, I also urge you to revisit and repeal provisions of Act 8690, which transferred the powers and authority of the Board of Elections to the Supervisor of Elections. On September 8, 2022, Supervisor Fawkes was the sole testifier supporting the nine amendments that transferred the powers and authority of the Board to the Supervisor of Elections. As a result, today, the Board of Elections is in chaos and is powerless. It is crippled and unable to function effectively. Our primary election is scheduled for August 1, 2026. We must not allow legal uncertainty to disenfranchise voters or diminish trust in our institutions.

The Legislature must now respond by amending Title 18 to comply with constitutional standards and provide clear legal frameworks for party operations and ballot access. While I fully support the structure and intent of Bill No. 36-0071, I respectfully propose additional provisions to safeguard transparency, voter trust, and procedural integrity. Therefore, I need to discuss the importance of protecting the integrity of our elections by ensuring that **ballot access control** is meaningful, transparent, and aligned with democratic values.

1. Dual Layers of Ballot Access Control

We recognize two essential layers governing whether someone appears on a **party's primary ballot**:

- **Territorial Election Law Requirements:** These include filing deadlines, petition signature thresholds or fees, legal qualifications such as age, residency, and party registration periods.
- **Democratic Party Certification:** This involves internal verification—including new bona fide membership requirements, compliance with party bylaws, endorsement processes, and loyalty to party principles.

A candidate must satisfy both layers to be listed as a Democratic Party primary candidate.

2. Importance of Party Control: Defending Our Brand and Democracy

Without meaningful certification by parties, the ballot label becomes suspect. Voters expect that someone listed under a party name genuinely embodies its values. Allowing candidates to run under a party label without party approval can lead to:

- Misrepresentation
 - Voter confusion
 - Strategic infiltration
 - Erosion of party credibility
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3. Legal Precedent: January 10, 2024 Ruling by Judge Robert Molloy

On **January 10, 2024**, Chief Judge **Robert Molloy of the U.S. District Court for the Virgin Islands** delivered a landmark ruling in a case brought by the Republican National Committee and the Republican Party of the Virgin Islands. He declared **ten provisions of Title 18 of the Virgin Islands Code unconstitutional**. [St. Thomas Source+6WTJXNewsFeed+6WTJXNewsFeed+6](#) Key findings include:

- Government statutes that imposed requirements on internal party operations—like timing of organizational meetings, certification procedures, or internal leadership selection—**unconstitutionally infringed on First Amendment associational rights**. [WTJXNewsFeed](#)
- The Court ruled that it is **not the role of government to regulate or reject a political party's internal process for selecting candidates or officers**—that authority rests with the party itself. [The Virgin Islands Consortium](#)

As a result, while the Board of Elections is still required to conduct primary elections on the established date, the **responsibility to certify candidates now falls squarely on the party**. [The Virgin Islands Consortium+4WTJXNewsFeed+4vivote.gov+4](#)

4. Why This Ruling Reinforces the Ballot Access Integrity Act

The **Ballot Access Integrity Act** reflects Judge Molloy's judgment in several ways:

- It formally recognizes that **party certification is a protected associational right**, not a government prerogative.
 - It ensures candidates must meet **both territorial election requirements and party certification** before appearing on a party ballot.
 - It respects the First Amendment by codifying the party's autonomy over its internal nomination processes.
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5. Closing: A Call to Protect Democracy

Senators, we now have a clear legal and constitutional imperative affirmed by the Molloy ruling: **only political parties—not government agencies—should determine who qualifies to use**

their name on the ballot. This principle must be enshrined in law to preserve democratic integrity.

By passing the **Ballot Access Integrity Act**, you uphold constitutional protections, restore trust in electoral representation, and ensure that the ballot truly reflects the will of party members. Voters will know that party labels are reliable indicators of genuine affiliation and shared values.

I urge you to stand for transparency, fairness, and the power of democratic association. Pass this Act—and send a clear message that in the Virgin Islands, elections are built on honest representation and respect for political freedom.

Congressional Advocacy for Territorial Voting Rights

Finally, as a proud member of the Democratic National Committee, I was honored to sponsor a resolution supporting **H.R. 4292**, introduced by Delegate Stacey Plaskett. This critical bill proposes the creation of a **Congressional Task Force on Voting Rights of United States citizens residing in U.S. territories**, aiming to confront the longstanding inequities faced by the 3.6 million Americans who reside in U.S. territories.

These citizens serve our nation in every capacity—from defending our freedoms in uniform to shaping our communities as educators, entrepreneurs, and public servants. Yet, they remain disenfranchised in federal elections. That is a democratic contradiction we must no longer accept.

I strongly urge the **36th Legislature of the Virgin Islands** to adopt a resolution of support for **H.R. 4292** and transmit it to Congress. By aligning territorial voices, we affirm our collective demand for fair representation and constitutional recognition. Let this moment mark our territory's leadership in the movement for electoral justice. Our advocacy must be strategic, unified, and unyielding.

- **Today, we have a path forward: Bill No. 36-0071**, sponsored by Senator Alma Francis Heyliger. Her courage in introducing this bill — as an unaligned senator in a chamber dominated by Democrats — deserves recognition. She saw the risk. She built the remedy. And she did so with principle, not partisanship.

All of those above are not just procedural corrections. *This is more than reform — it's a blueprint for democratic renewal.* Let us demonstrate that when trust is tested, leadership answers boldly, transparently, and with the voters at heart. Electoral accountability is not partisan. It is a cornerstone of democracy, and we must ensure that every citizen feels secure in their participation. I urge this Legislature to act where others did not — to affirm your commitment to the rule of law and the sanctity of the vote. Thank you for the opportunity, and I'm prepared to answer any further questions.

Virgin Islands Ballot Access Integrity Act

Bill No. XXXX

Introduced by: [Name(s) of sponsor(s)]

Date: [Insert date]

AN ACT

To amend the Virgin Islands Code to establish clear requirements for candidate ballot access in primary elections, to recognize the authority of political parties to determine bona fide party membership, and for other related purposes.

BE IT ENACTED BY THE LEGISLATURE OF THE VIRGIN ISLANDS:

SECTION 1. Short Title

This Act may be cited as the “**Ballot Access Integrity Act of [Year]**”.

SECTION 2. Legislative Findings and Purpose

(a) The Legislature finds that:

1. The integrity of the electoral process requires that candidates appearing on a political party’s primary ballot be bona fide members of that party.
2. Both the Elections System of the Virgin Islands and recognized political parties have essential roles in maintaining the credibility of the ballot.
3. Clear coordination between the Elections System and political parties will protect voters from confusion, uphold party affiliation integrity, and strengthen public confidence in elections.

(b) The purpose of this Act is to:

1. Establish uniform procedures for determining ballot access in primary elections.
 2. Recognize the authority of political parties to verify bona fide membership status.
 3. Ensure compliance with both territorial election laws and party rules before a candidate’s name is placed on a primary ballot.
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SECTION 3. Definitions

For purposes of this Act:

1. “**Bona fide member**” means a person who:
 - Is registered to vote as a member of the political party in question;
 - Has maintained continuous party registration for at least **[insert number] months** prior to the filing deadline; and
 - Affirms support for the principles and platform of the political party.
 2. “**Recognized political party**” means any political party qualified under the Virgin Islands Code to hold a primary election.
 3. “**Party certification**” means a written verification by the recognized political party that a candidate meets the bona fide membership requirements.
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SECTION 4. Candidate Filing Requirements for Primary Elections

(a) No person shall be eligible to appear on a recognized political party's primary ballot unless that person:

1. Meets all requirements under territorial election law, including filing deadlines, petition signature thresholds, and any applicable fees; and
2. Has obtained **party certification** from the recognized political party affirming bona fide membership status.

(b) The Elections System shall not place a candidate's name on a party primary ballot unless both conditions in subsection (a) are met.

SECTION 5. Party Certification Process

(a) Each recognized political party shall:

1. Establish a process for determining bona fide membership status.
2. Provide written certification or denial to the Elections System within [e.g., **5 business days**] after a candidate files a declaration of candidacy.

(b) If a party denies certification, it must provide the candidate with written notice stating the reason for denial and advising of any internal party appeal process.

SECTION 6. Dispute Resolution

(a) Any dispute regarding party certification may be appealed:

1. First, through the recognized political party's internal appeal process; and
 2. Second, if unresolved, to the Superior Court of the Virgin Islands for expedited review.
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SECTION 7. Effective Date

This Act shall take effect immediately upon enactment and apply to all primary elections held thereafter.

Key Features of This Draft

- **Dual Gatekeeping:** Requires meeting both **state/territory** election requirements **and** **party certification**.

- **Formal Recognition of Party Authority:** Codifies the party's role in protecting its ballot line.
- **Appeal Process:** Gives candidates due process but keeps disputes out of general election chaos.
- **Clarity:** Prevents confusion by making the Elections System follow a clear rule: *No party certification, no name on the party primary ballot.*