

**Statement of the
Honorable John P. deJongh, Jr.
Governor of the U.S. Virgin Islands**

**Hearing on the
Proposed Virgin Islands Constitution
from the Fifth Constitutional Convention**

**Before the
Subcommittee on Insular Affairs, Ocean and Wildlife
Committee on Natural Resources
U.S. House of Representatives
Washington, D.C. 20500**

March 17, 2010

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 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 failed expressly to recognize the supremacy of the U.S. Constitution and the laws of the United States. But it failed in other and equally fundamental ways as well: It failed to celebrate, let alone defend, the rights and ideals that have made the United States of America the shining light of hope and freedom for the entire world. It did not treat all men and women as equal.

And so 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.

The constitutional deficiencies of the proposed constitution are glaring, and they are by now well documented by every competent lawyer who has considered them: the constitutional convention's own legal counsel; my own legal counsel; the Virgin Islands Attorney General; and the U.S. Department of Justice. But those deficiencies are so profoundly contrary to the most basic of American constitutional values that I felt obligated to publicly speak out to the residents of the Virgin Islands back in June of 2009. I will describe these deficiencies briefly for you here today.

First, as I referenced earlier, the proposed constitution fails to recognize the supremacy of the Constitution and laws of the United States. Such recognition is required, both by statute and by the practicalities of governance; but more important, it is an essential symbol of the Virgin Islands' place within the American system — and of Virgin Islanders' identities as Americans.

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 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, and confers special political and economic benefits upon favored classes of "native" and "ancestral native" Virgin Islanders. Such persons are exempt from certain property taxes; are given the exclusive right to vote in a "special election" devoted to the Islands' "status" as a U.S. Territory; are given preferential participation rights on votes on constitutional amendments; and are the only persons eligible to hold the offices of Governor and Lieutenant Governor.

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.

For the reasons that I have outlined, when I was first presented with this flawed constitution, I sought a legal opinion from my Attorney General. He explained and detailed the document's many and grave deficiencies, and further advised that the proposed constitution was so grossly contrary to fundamental U.S. Constitutional principles that I could not, consistent with my oath of office, further its enactment.

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