

**TESTIMONY OF
THE HONORABLE USIE R. RICHARDS
MINORITY LEADER - 28TH LEGISLATURE OF THE VIRGIN ISLANDS**

**BEFORE THE
SUBCOMMITTEE ON INSULAR AFFAIRS, OCEANS AND WILDLIFE
OVERSIGHT HEARING ON THE
PROPOSED CONSTITUTION OF THE UNITED STATES VIRGIN ISLANDS
ADOPTED BY THE FIFTH CONSTITUTIONAL CONVENTION ON MAY 26, 2009**

**WEDNESDAY, MARCH 17, 2010, 2:00 P.M.
ROOM 1324, LONGWORTH HOUSE OFFICE BUILDING**



**MINORITY LEADER OF THE LEGISLATURE OF THE VIRGIN ISLANDS
TESTIMONY: THE 5TH PROPOSED CONSTITUTION OF THE U.S.V.I.**

**Presented by Senator Usie R. Richards
Minority Leader-28th Legislature of the Virgin Islands**

March 17, 2010

GOOD AFTERNOON, CHAIRWOMAN BORDALLO, MEMBERS OF THE SUBCOMMITTEE ON INSULAR AFFAIRS, OCEANS AND WILDLIFE, MEMBERS OF CONGRESS AND ALL OTHERS, **I AM USIE R. RICHARDS, A SENATOR AND THE MINORITY LEADER OF THE 28TH LEGISLATURE OF THE VIRGIN ISLANDS.** THANK YOU FOR YOUR INVITATION TO SHARE MY VIEWS ON THE PROPOSED CONSTITUTION THAT IS BEFORE YOU. LET ME STATE FROM THE ONSET, I STAND FIRMLY ON THE PRINCIPLE THAT THE PROCESS SHOULD ENSURE THAT THE DOCUMENT DEVELOPED BY THE CITIZENS AND REGISTERED VOTERS OF THE VIRGIN ISLANDS, WHO WERE ELECTED TO THE FIFTH CONSTITUTIONAL CONVENTION BY REGISTERED VOTERS THROUGHOUT THE UNINCORPORATED TERRITORY OF THE VIRGIN ISLANDS, BE GIVEN THE OPPORTUNITY TO BE VOTED UPON BY THE VOTERS THAT BEGAN THIS PROCESS THROUGH ITS ELECTED REPRESENTATIVES IN THE 26TH LEGISLATURE. MUCH HAS BEEN SAID AND WRITTEN REGARDING A NUMBER OF ISSUES SURROUNDING THE CONTENT OF THE DOCUMENT AND TODAY I INTEND TO OFFER MY PERSPECTIVE ON WHAT HAS TRANSPIRED. I HAVE NO INTENTION TO DECLARE WHAT IS CORRECT OR INCORRECT, BUT MORE IMPORTANTLY TO PROVIDE A PERSPECTIVE THAT SHOULD AID THIS BODY IN UNDERSTANDING THE CONDITIONS AND CIRCUMSTANCES UNDER WHICH MUCH OF THE DOCUMENT'S CONTENT HAS EVOLVED.

I AM REMINDED OF MY TESTIMONY SHARED BEFORE THE COMMITTEE ON RESOURCES, CHAIRED BY REPRESENTATIVE DON YOUNG ON MAY 17, 2000, AS IT RELATED TO H.R. 3999, A PROPOSAL **"CLARIFYING THE PROCESS FOR THE ADOPTION OF LOCAL CONSTITUTIONAL SELF-GOVERNMENT FOR THE VIRGIN ISLANDS"**. THE FAILURE TO ACT ON RECOMMENDATIONS MADE ALMOST A DECADE AGO CONTINUES TO HAMPER THE ATTEMPT OF OUR POPULACE TO SECURE SOME GREATER LEVEL OF SELF-GOVERNMENT IN THE VIRGIN ISLANDS.

TODAY, ELECTED, APPOINTED AND IN SOME CASES “ANNOINTED” MEMBERS OF OUR COMMUNITY REMAIN ENTRENCHED IN HEATED DISUCSSIONS AND DEBATES RELATING TO THIS PROPOSED CONSTITUTION. DESPITE ALL OF THIS, I UNDERSTAND THE FOUNDATION THAT THESE ISSUES HAVE SAT ON FOR SO MANY YEARS. THE VIRGIN ISLANDS HAS BEEN, AND REMAINS TODAY, AN UNINCOPORATED TERRITORY OF THE UNITED STATES, A SUBJECT MATTER BEST DESCRIBED BY FORMER CONGRESSMAN ROBERT UNDERWOOD FROM GUAM IN HIS INTRODUCTION OF H.R.1521 THE GUAM COMMONWEALTH BILL. HE STATED, **“GUAM IS CURRENTLY AN UNINCORPORATED TERRITORY, AN UNICORPORATED TERRITORY MEANS THAT FIRST, LAWS CAN BE IMPOSED UPON THE PEOPLE OF GUAM WITHOUT CONSULTATION, SECOND, ANY LOCAL LAW CAN BE ABROGATED BY THE U.S. CONGRESS, THIRD, U.S. CITIZENSHIP CAN BE TAKEN AWAY FROM THE PEOPLE OF GUAM, FOURTH, GUAM CAN BE BOUGHT, SOLD OR TRADED BY THE FEDERAL GOVERNMENT, AND FIFTH, GUAM AS A TERRITORY IS IN THE TRUEST SENSE A POSSESSION”**. WHEN THE MEMBERS OF THE 5TH CONSTITUTIONAL CONVENTION DECLARE IN ITS PREAMBLE, **“ASSUMING THE RESPONSIBILITIES OF SELF-GOVERNMENT AS AN UNINCOPORATED TERRITORY OF THE UNITED STATES”**, AS ACKNOWLEDGED BY ASSISTANT ATTORNEY GENERAL RONALD WEICH, THIS CLEARLY ILLUSTRATES THE WRITERS’ ACKNOWLEDGEMENT OF UNITED STATES SOVEREIGNTY. I WOULD HOPE THAT THE LEARNED AMONGST US, WOULD RECOGNIZE THAT THE TERM **“UNINCOPORATED TERRITORY”**, CLEARLY SPEAKS TO AN ENTITY THAT IS SUBSERVANT TO AND LACKS THE WHEREWITHAL TO FREELY ACT ON ITS OWN. WHETHER THE STATEMENT IS EXPLICIT OR IMPLICIT BECOMES A MATTER OF SEMANTICS.

LIKEWISE, THE SUPREMACY OF FEDERAL LAW IS RECOGNIZED BY THE 5TH CONSTITUTIONAL CONVENTION, PROPOSED WITH ITS INCLUSION OF THE RELEVANCE OF THE 1917 TREATY BETWEEN THE UNITED STATES AND DENMARK AND ITS RECOGNITION OF THE RIGHTS OF U.S. COURTS TO REVIEW DECISIONS

OF LOCAL COURTS UNDER THE U.S. CONSTITUTION AND FEDERAL LAWS. AS CONCLUDED BY ATTORNEY WEICH, **“WE BELIEVE THE PROPOSED CONSTITUTION IS IN SUBSTANTIAL COMPLIANCE WITH SUBSECTION 2(b)(1) OF THE ENABLING ACT”**.

WHILE I REMAIN COGNIZANT OF THE TREPIDATIONS THAT MAY HAVE BEEN CREATED BY THE INCLUSION OF LANGUAGE IN THE PROPOSED CONSTITUTION ADDRESSING THE ISSUE OF **“CLASSIFICATIONS BASED ON PLACE AND TIMING OF BIRTH, TIMING OF RESIDENCE, AND ANCESTRY”**, I MUST REMIND YOU THAT MUCH OF THIS STEMS FROM PRIOR ACTIONS OF THIS BODY. THIS BODY HAS ENACTED LAWS TO ADDRESS EDUCATION FOR THE NATIVE HAWAIIAN AND ALASKAN IN **“P.L. 103-382 OF OCTOBER 20, 1994”**. IN THE NORTHERN MARIANAS THIS BODY HAS RECOGNIZED THE SIGNIFICANCE OF RESTRICTIONS OF ALIENATION OF LAND IN **“ARTICLE XII OF THE COMMONWEALTH CONSTITUTION”**, WHILE GIVING SPECIAL PREFERENCE TO THE NATIVE AMERICAN SAMOAN IN **“16 USC, CHAPTER 1 ON NATIONAL PARKS, MILITARY PARKS, MONUMENTS, AND SEASHORES”**. IN **P.L. 414-JUNE 27, 1952** IN TITLE III-NATIONALITY AND NATURALIZATION, THIS BODY WENT TO GREAT LENGTHS TO DETERMINE AND DEFINE WHO SHALL BE CONSIDERED A CITIZEN, **“IF THE PERSON WAS BORN IN PUERTO RICO ON OR AFTER APRIL 11, 1899; BORN IN THE CANAL ZONE OR REPUBLIC OF PANAMA AFTER FEBRUARY 26, 1904; BORN IN ALASKA ON OR AFTER MARCH 20, 1867; BORN IN HAWAII ON OR AFTER AUGUST 12, 1898; LIVING IN AND BORN IN THE VIRGIN ISLANDS SUBSEQUENT TO JANUARY 17, 1917, AND PRIOR TO FEBRUARY 25, 1927; AND LIVING IN AND BORN IN GUAM AFTER APRIL 11, 1899 AND DECLARED CITIZENS OF THE U.S. AS OF AUGUST 1, 1950”**. NOT ONLY HAS THIS BODY EXERCISED THEIR AUTHORITY AS IT RELATES TO CITIZENSHIP, BUT EVEN IN THE CASE OF PUBLIC LANDS IN **“SECTION 1601 OF THE ALASKA NATIVE CLAIMS ACT”** THIS BODY HAS DEFINED WHO OUGHT TO HAVE THE RIGHT TO REDRESS UNDER THIS LAW. THIS INALIENABLE RIGHT IS FURTHER DEFINED IN **“SECTION 3, OF P.L. 92-203 OF DECEMBER 18, 1971”**, AS IT RELATES TO THE DECLARATION OF SETTLEMENT IN THE STATE OF ALASKA. IN **“H.R. 1056 IH, SECTION 102”**., THIS BODY NOT ONLY RECOGNIZES THE INALIENABLE RIGHT OF SELF-DETERMINATION OF THE INDIGENOUS CHAMARRO PEOPLE OF GUAM, BUT ALSO ALLOWS FOR **“THE CONSTITUTION TO ESTABLISH REASONABLE RESIDENCY REQUIREMENTS FOR THE CITIZENS OF SUCH COMMONWEALTH FOR THE PURPOSES OF THE RIGHT TO VOTE IN COMMONWEALTH ELECTIONS OR TO HOLD ANY ELECTIVE OFFICE BY THE CONSTITUTION OF GUAM”**.

THIS BODY HAS UNLIMITED POWER OVER THE UNINCORPORATED TERRITORY OF THE VIRGIN ISLANDS. THIS BODY AUTHORIZED CITIZENSHIP TO THE INDIGENOUS PEOPLE OF THE UNINCORPORATED TERRITORY OF THE VIRGIN ISLANDS IN 1927, A FULL TEN YEARS AFTER THE 1917 PURCHASE FROM DENMARK, A CITIZENSHIP THAT WAS NOT FULLY CONFERRED UNTIL AS LATE AS 1940. OBVIOUSLY, THE ENACTMENT OF CONGRESSIONAL LAWS TO PROTECT OR ENHANCE THE STATUS OF INDIGENOUS PEOPLES IN BOTH POSSESSIONS AND STATES OF UNITED STATES HAS CREATED THE SENSE AND NEED TO ADDRESS THE STATUS OF THE INDIGENOUS IN THE VIRGIN ISLANDS. THIS BODY HAS PLACED ITSELF IN THE POSITION TO NOW ADDRESS OR REDRESS THE INEQUITIES CREATED BY THE PURCHASE OF A LAND WITH NO REAL REGARD TO THE THEN OCCUPANTS THAT RESULTED IN UNCONTROLLED POPULATION GROWTH, OUTSIDE ECONOMIC DOMINANCE, DETERIORATION OF OUR SOCIAL MORES AND AN INFILTRATION OF OUR POLITICAL PROCESS.

AS A MATTER OF FACT, **THE EASTERN CARIBBEAN CENTER OF THE UNIVERSITY OF THE VIRGIN ISLANDS**, IN THEIR “RESEARCH NEWS FROM ECC”, RELEASED IN JANUARY OF 2010, INFORMED US OF THAT SOME 58,786 VIRGIN ISLANDS NATIVES LIVING IN THE UNITED STATES IN 2008. “SINCE 1980, ALMOST 8 OUT OF 10 OF ALL NATIVES IN THE U.S. HAD MIGRATED THERE. BETWEEN 1980 AND 1989, 13,184 NATIVES MOVED AWAY BETWEEN 1990 AND 1999, 17,550 EMIGRATED AND BETWEEN 2000 AND 2009 15,143 NATIVES TOOK UP RESIDENCE IN THE STATES”. THIS IS ACCORDING TO THE 2008 AMERICAN COMMUNITY SURVEY (ACS) PUBLIC USE MICRODATA SAMPLE FILE. ACCORDINGLY, THE VIRGIN ISLANDS COMMUNITY SURVEY (VICS) INDICATES THAT THE TOTAL POPULATION OF THE USVI WAS 114,744. SIMPLY PUT, THE 58,786 VIRGIN ISLANDS NATIVES LIVING IN THE UNITED STATES REPRESENTS MORE THAN HALF OF THE CURRENT RESIDENT POPULATION OF THE VIRGIN ISLANDS. IT IS THEREFORE CONCEIVABLE WHY THE WRITERS OF THE PROPOSED CONSTITUTION GAVE GREAT WEIGHT AND CONSIDERATION TO NATIVE VIRGIN ISLANDERS LIVING ABROAD.

THE POINT IS, IF THIS BODY CAN ADDRESS SUCH ISSUES AS CITIZENSHIP, ECONOMICS, SOCIAL NEEDS, PROPERTY, SETTLEMENTS, TRUST LAND,

EXCLUSIVE ECONOMIC ZONES, EDUCATION, ALIENATION OF LAND, PARKS AND OTHERS, THEN SURELY THIS BODY CAN ENSURE THE INALIENABLE RIGHTS OF THE INDIGENOUS PEOPLE OF THE VIRGIN ISLANDS TO PURSUE GREATER SELF-GOVERNMENT THROUGH THE DRAFTING, VOTING AND ADOPTION OF A CONSTITUTION.

I BELIEVE THE ANNALS OF THIS BODY SAID IT BEST, **“THIS IS A MATTER TO BE CONSIDERED BY THE VOTERS, OR PERHAPS, AT SOME FUTURE TIME, BY THE COURTS”**. I URGE YOU TO ALLOW THE VOTERS OF THE U.S. VIRGIN ISLANDS TO EXERCISE SOME SEMBLANCE OF DEMOCRACY BY BEING ABLE TO CONSIDER THE CONTENT DEVELOPED BY THEIR DULY ELECTED MEMBERS TO THE 5TH CONSTITUTIONAL CONVENTION. I THANK YOU FOR YOUR TIME AND CONSIDERATION.