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The Honorable Charles W. Turnbull Governor of the United States Virgin Islands

Statement

Before The Committee on Resources
United States House of Representatives

Hearing on H.R. 3589, to Create
The Office of Chief Financial Officer
of The Government of the Virgin Islands

Washington, D.C.
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Mr. Chairman and Members of the Committee on Resources of the U.S. House of Representatives, I would like to thank you for the opportunity to appear before you and to testify on the proposal for the establishment of an unelected Chief Financial Officer for the Government of the United States Virgin Islands.

Introduction: The Long Path Toward Democratic Governance

At the outset, I wish to acknowledge the role played by this distinguished Committee and its immediate predecessor, the Committee on Interior and Insular Affairs, in promoting and furthering local self-government in the Virgin Islands over the course of our proud history under the American flag since the transfer from Danish sovereignty in 1917. We note the successful effort by this Committee to establish the first Territorial government, independent of Naval Department rule, that came with the enactment of the Virgin Islands Organic Act of 1936. We recognize the work of your forebears in developing the Revised Organic Act of 1954, which reorganized and modernized the Territorial government, created a unicameral legislature to replace the colonial-era municipal councils, and provided for its Constitutional status by abrogating all laws of the United States then in effect that were inconsistent with the Act or its subsequent amendment. The Act intended, in the words of its Congressional authors, to confer "a greater degree of autonomy, economic as well as political, to the people of the Virgin Islands." Effectively, the Revised Organic Act of 1954, as it has been amended from time to time, serves as our local constitution, specifying the powers of the executive, legislative and judicial branches in a republican form of government.

Indeed, the Revised Organic Act has been amended by Congress on several occasions since 1954, each time with the objective of expanding further the autonomy of the Virgin Islands and its powers of local self-government. In 1958, Congress expanded the legislative charter of the Virgin Islands government expressly to include "all rightful subjects of legislation not inconsistent with . . . the laws of the United States made applicable to the Virgin Islands." As interpreted by the federal courts, the 1958 amendment "broaden[ed] the legislative power of the Virgin Islands to cover the 'ordinary area of sovereign legislative power' limited only by the provisions of the Revised Organic Act and the laws of the United States made applicable to the Virgin Islands." *Virgo Corp. v. Paiewonsky*, 384 F.2d 569, 579 (3d Cir. 1967).

In 1968, this Committee reported, and Congress enacted, the Elective Governor Act of 1968, authorizing for the first time the popular election of the governor of the Virgin Islands and perfecting the authority of the executive branch within the established framework of our democratic system of government. At the same time, the 1968 statute eliminated the authority of the President of the United States to veto local legislation, thus adding to the representative power of the legislative branch of our government. Similarly, in 1984, Congress set in motion the restructuring of the Virgin Islands judicial system by limiting the jurisdiction of the Federal District Court in the Virgin Islands to "general original jurisdiction in all causes in the Virgin Islands the jurisdiction over which is not then vested by local law in the local courts of the Virgin Islands." 48 U.S.C. § 1612(b). Completing the empowerment of the third branch of the Virgin Islands Government, the 1984 statute conferred upon the Legislature of the Virgin Islands, "the power to vest jurisdiction over local actions exclusively in the local courts." *Callwood v. Enos*, 230 F.3d 627, 631 (3 Cir. 2000).

The evolution of self-government in the Virgin Islands has not come without struggle or sacrifice. With the delegation of increasing authority by Congress pursuant to the Territorial Clause of the United States Constitution, the Government of the Virgin Islands has evolved over the years into an institution of powers and responsibilities comparable to those of any State in the Union. As a result of this evolution and the far-sighted policies of the federal government, and particularly the progressive policies of the Congress, citizens

in the United States Virgin Islands enjoy a level of liberty and prosperity that is unrivaled anywhere in the Caribbean or the rest of this hemisphere. There are many heroes to be recognized who fought valiantly on our behalf in this struggle and who helped create the conditions of liberty and prosperity, both in the Territory as well as here in Washington, D.C. Indeed, many of them served on this distinguished Committee, and for that I express the gratitude of all Virgin Islanders.

Mr. Chairman, the bill, which is the subject of this hearing, unfortunately is not worthy of the great tradition of this Committee in promoting the highest ideals of representative self-government in the off-shore territories of the United States.

An Overview of H.R. 3589

Mr. Chairman and members of this distinguished Committee, the U.S. Constitution, in Article IV, Section 4, requires the United States to "guarantee to every State in the Union a Republican Form of Government. . . ." Under the leadership of this Committee and its predecessors, Congress, as earlier discussed, has sought to guarantee to the U.S. Virgin Islands a republican form of government, following the model established for the several States. Our achievements on the path to self-governance have been accomplished through the wise exercise of Congress's plenary powers over unincorporated Territories under the Territorial Clause, as set forth in Article IV, Section 3, paragraph 2 of the Constitution of the United States, and through legislation implemented at the local level pursuant to such delegated powers.

In an ill-considered effort — unprecedented in Virgin Islands history — to reverse course, H. R. 3589, the bill before you today, would severely impair the authority of elected Territorial officials, and place excessive power in the hands of a single unelected person who would remain unaccountable to the people and their elected officials in the Virgin Islands for the full five-year tenure of his or her term of office. If a republican form of government places limited powers in the hands of elected officials acting on behalf of the electorate, the form of government prescribed by the terms of H.R. 3589 would create conditions leading to the opposite result. Under the bill, a single newly established official, the so-called Chief Financial Officer, or CFO, would seize operational control over the executive branch of the Government of the Virgin Islands. Unelected and unaccountable to anyone, this official could be removed from office only for cause — a term usually associated with malfeasance in office.

Under the plain terms of H.R. 3589, the CFO of the Virgin Islands would be accorded extraordinary power for a five-year period without the checks and balances traditionally provided in a republican form of government. Given this fact, this Committee, as well as the electorate of the Virgin Islands, will be most interested to learn about the precise nature of the extraordinary powers that would be removed from representative government and transferred to the independent CFO. With your permission, I will now discuss those powers, and demonstrate how abuse of office could easily occur, without any recourse or remedy available to the Territory's elected officials, or to the people.

The CFO's Unprecedented Powers

Under the terms of H.R. 3589, the CFO would assume the authority and duties of the Director of the Virgin Islands Office of Management and Budget (VIOMB), a person who, under current law, is nominated by the Governor and approved by the Legislature. The Director of VIOMB has substantial power, not only to develop Territorial policies through the budget process, but to control spending and to modify legislative appropriations through the allotment process. In this respect, the Director of VIOMB has power that Congress has denied the President under the Congressional Budget Act. The CFO would also prepare certain financial reports, certify certain financial performance standards, and monitor certain financial operations. These latter functions are either currently being competently performed, or could be easily implemented, preferably with technical assistance from the Office of Insular Affairs of the U.S. Department of the Interior (OIA), whose statutory mandate already includes assistance for such functions — assistance which we have previously requested from OIA. Indeed, H.R. 3589 would require the Secretary of the Interior to "provide a financial management system, including appropriate computer hardware and software, to the Government of the Virgin Islands." On this point, we can agree: our financial management technology needs to be updated; but it does not follow that the unrequested imposition of an unaccountable CFO should be a precondition to such assistance.

Mr. Chairman, to put it bluntly, the essence of H.R. 3589 — indeed, the bill's fundamental purpose — is to usurp the authority of the Director of the VIOMB under local law, and to place such authority, under Federal law, in the hands of an official who is neither accountable to the Governor, the Legislature, nor to the people of the Virgin Islands. This is how such drastic changes would be implemented under the terms of the bill. The CFO would be given the responsibilities of the Director of the VIOMB, as set forth in Section 22 of Title 2, Virgin Islands Code. Among other powers, he or she would assume the powers of program execution, as set forth in section 26(c) of Title 2, Virgin Islands Code, including the power to withhold appropriated funds and to revise departmental priorities. In short, the CFO would assume overall responsibility for the functions of the Virgin Islands Office of Management and Budget, as described in

Section 4 of Title 3, Virgin Islands Code. Once having assumed such powers, the CFO would exercise them for five full years, without oversight and without fear of removal from office, except for cause.

Under the Virgin Islands Code, the Director of the Office of Management and Budget has responsibilities similar to, but in some respects greater than, the Director of the U.S. Office of Management and Budget. The Director prepares the executive budget; the Director resolves competing demands among departmental and agency heads for limited resources; the Director provides guidance to departments and agencies on the allocation and management of their financial resources, their physical resources, and their human resources.

Under our law, the Director of VIOMB has the authority to direct program managers to revise their operational plans in whole or in part. The Director may modify or withhold planned expenditures of appropriated funds at any time during the appropriation period if he or she finds that such expenditures are greater than those necessary to execute the programs as authorized by law, or if he or she finds that receipts and surpluses will be insufficient to meet authorized expenditure levels. The Director, under current law, reports quarterly to the Governor and the Legislature on the operations of each department and agency, relating actual accomplishments to those planned, and modifying, if necessary, the operations plan of any department or agency for the balance of the fiscal year. In short, the Director of the Office of Management and Budget directs expenditures to ensure that essential functions are preserved, and that program priorities are maintained and missions are accomplished; but he also exercises the powers of apportionment and allotment of available funds similar to the impoundment authority once, but no longer, wielded by the President of the United States.

There is one major distinction, however, between the powers of the Director of the VIOMB under current law, and the functions of the CFO under the terms of H.R. 3589, and that distinction makes all the difference in the world. Under current law, the Director is accountable to the Governor, and through him, to the people of the Virgin Islands. Under H.R. 3589, however, the CFO is not accountable to either the Governor or to the people. Specifically, the Director, in the exercise of all functions, must ensure that his decisions are "consistent with the policy decisions of the Governor. . . ." See, e.g., Section 26(c)(1) of Title 2, Virgin Islands Code. In carrying out his duties, the Director serves at the pleasure of the Governor. If the Director fails to carry out the policy directives of the elected Governor, he or she can be removed from office. In contrast, if the proposed CFO were to disregard the Governor's policy directives, there would be no practical remedy. Neither the elected Governor nor the electorate would have an effective way to restore power to the people.

If the CFO were to impose his or her own priorities, the Governor would be left with two unworkable choices: either to defer to the CFO's judgment, or to attempt to create an impasse with the complicity of the Legislature. There would be no practical way to remove the offending CFO; the terms of H.R. 3589 would not permit it. If on the other hand, the CFO were to defer to the Governor on all policy and programmatic decisions, there would be no reason for having created the office in the first place. Under such circumstances, the bill's only practical effect would be to deny the Governor's right to name his own person to the office, subject to the advice and consent of the Legislature.

The CFO Selection Process

Under the terms of H.R. 3589, the three candidates for CFO would be selected by a commission under the chairmanship of the Secretary of the Interior, or her designee, presumably the Honorable David Cohen, Deputy Assistant Secretary of the Interior for Insular Affairs. If the Governor refused to nominate one of the anointed three, the Secretary of the Interior would step in to name an Acting CFO.

Mr. Chairman, one can hardly imagine a more undemocratic process for selecting a local official to serve in an essential governmental office. The Governor, in the first place, is denied any real discretion in nominating one of his most important appointive officials. Once forced to choose from among three candidates produced under a process organized by a cabinet-level Federal officer, the Governor would be forced either to accommodate the dictates of the CFO, or to create an impasse in governance in concert with the legislative branch.

The selection process for the CFO under the bill undermines the prerogatives and authority of the Governor. More compellingly, the exercise of unchecked powers by an unelected CFO, accountable to no one, could threaten the very existence of the republican form of government bestowed upon us by the Revised Organic Act, and which Congress and the people of the Virgin Islands have steadfastly sought to perfect over the last half century. Together, these provisions of H.R. 3589 are a prescription for a dysfunctional government in the Virgin Islands, a most unwelcome outcome for the members of this distinguished Committee, for the Congress as a whole, and for the United States citizens in the United States Virgin Islands.

Fiscal Progress of the Government of the Virgin Islands

Quite apart from the Constitutional infirmities of this bill, it is simply the wrong remedy, for the wrong

ailment, at the wrong time. In point of fact, notwithstanding the economic setbacks occasioned by 9/11 and the ensuing national recession, the Government of the Virgin Islands has made enormous progress in stabilizing its fiscal condition over the course of the last six years. After two difficult years, we have resumed our march towards fiscal balance and economic stability. Revenues are growing, spending is coming under control, total debt service is manageable. We are not facing fiscal insolvency or collapse. In short, there is no fiscal reason to support the abrogation of the Governor's authority under this bill.

Two and a half weeks ago, I transmitted to the Legislature a balanced budget for Fiscal Year 2005, calling for spending of \$565 million, a reduction of some \$25 million, or approximately 5 percent below spending levels in Fiscal Year 2004. This balanced budget has been accomplished after painstaking review and careful consideration of difficult alternatives by my financial team — including the Director of the Office of Management and Budget — through a combination of spending reductions and revenue enhancements. While we were forced, like most of the States of the Union, to balance last year's budget with short-term borrowing and non-recurring revenues, we were able to do this on our own, without instruction by others and without massive layoffs or debilitating reductions in essential public services.

The balanced budget now pending before the Legislature restores the Virgin Islands to the path of fiscal responsibility and stability we started on when I first assumed office in January 1999. Indeed, at that time, the Virgin Islands was still suffering from the effects of two of the most destructive hurricanes to hit our shores in the last century, disasters which left in their wake billions of dollars of property losses, decimation of much of the tourism infrastructure on St. Croix, and erosion of our tax base. We survived the worst of these disasters through the hard work and resourcefulness of our people, but also through the generosity of the Federal government, including the Federal Emergency Management Agency (FEMA). While total Federal disaster assistance totaled several hundreds of millions of dollars, much of it was also in the form of federal loans. Even today, absent debt forgiveness under the terms of the Stafford Act or other law, we will be obligated to repay FEMA over \$180 million for Federal emergency disaster assistance that kept the government operating in the immediate aftermath of the hurricane's path of destruction.

For these and other reasons, the economy in the Virgin Islands never fully recovered from the disasters of the 1990s. As a consequence, when I assumed office in 1999, revenues were falling, spending was climbing, tax refunds and vendor payments were unpaid and negotiated salary increases for hardworking but underpaid government workers were ignored. Moreover, the exact state of the finances was unknown, because the Government had no current audited financial statements for the central Government. Indeed, the Government had at that time completed only one Single Audit of the comprehensive functions of the Virgin Islands Government, as required by the federal Single Audit Act of 1984, as amended, over the previous 14-year period.

One must recognize that the responsibilities of the Territorial government are not just to provide a balanced budget, but also to deliver essential services to the people. Our public schools required badly needed repairs and hurricane-destroyed schools needed to be completely rebuilt. Our solid waste landfills and antiquated wastewater treatment facilities violated federal standards. Our road fund was depleted, leaving potholes unrepaired and our roads unsafe to drive. And our Economic Development Program was largely moribund, starving the Territory of urgently needed private investment.

Faced with these cold realities, we went to work. Under my administration, I imposed a hiring freeze on government agencies. I instructed my Office of Management and Budget to cut spending in my first year in office and to prepare a revised budget for my second year slashing departmental spending by 10 percent. I directed the preparation of a five-year economic and fiscal recovery plan for long-term financial stability. And I developed a partnership with the Secretary of the Interior to assist in addressing our problems with a commitment to return the budget of the Virgin Islands Government to structural balance by the end of Fiscal Year 2003.

While it was not always easy and not always smooth — it never is in a democratic system — over the first three years of my first term in office, we did restore fiscal discipline; we did earn the respect of the federal government; we did generate record new revenues; we did pay long delinquent tax refunds and overdue vendor bills; we did reduce our debt; we did pay our government workers their long denied salary increases; and we did lay the foundation for a broad-based economic and financial recovery. We did this in a compressed period of time, which many thought was impossible, through the hard work of my fiscal team. Indeed, we exceeded our goals and achieved our first budget surplus by the end of Fiscal Year 2001. And we made a concerted effort to produce timely audited financial statements in compliance with the Single Audit Act for the first time in our history. The comprehensive financial audits required under this Federal law are among the most valuable tools available for effective financial management and provide the most accurate picture of a government's financial condition, as well as the roadmap, where appropriate, for fiscal reform. Mr. Chairman, I am proud to state that, while only one such audit had been completed prior to my tenure in office, my administration has completed eight such audits for the Fiscal Years 1995-2002 and is now in full compliance with the Act. As a result of our progress in achieving compliance with the Single Audit Act and improving our financial accountability, Wall Street rating agencies have issued investments

grade ratings when the Government has in recent years sought to access the capital markets.

No local government official, in the Virgin Islands or anywhere else, however, could have predicted 9/11 and the significant damage it would cause to our national and Territorial economies. Indeed, since 9/11, virtually every State in the Union and every Territory of the United States has fallen into recession and into deficit. The Virgin Islands was no different. And while many of the same economic forces are at play in the Virgin Islands as in the United States, we also face additional challenges. For example, the policy prescription chosen by the President and the Congress to cure our economic ills — significant tax reduction — has had the unintended but automatic consequence of reducing Territorial revenues under our Congressionally-mandated mirror income tax system. Indeed, our Bureau of Internal Revenue has estimated that the Virgin Islands will lose more than \$57 million in the current tax year alone as a result of Congress' enactment of income tax rate reductions and its expansion of refundable tax credits. In addition, the Territory is losing more than \$7 million in corporate tax revenues each year as a result of the recent World Trade Organization (WTO) ruling against the U.S. foreign sales corporation law. The Virgin Islands Government is also under federal consent decree requiring the Government to significantly increase expenditures for the improvement of our wastewater and solid waste systems in the Territory at the same time it must commit scarce local resources to meet other unfunded federal mandates. And healthcare costs continue to increase in the Territory as on the mainland, with the Government forced to pick up a disproportionate share of the costs for the poor and the uninsured as a result of the continuing discriminatory cap on Medicaid reimbursement.

Notwithstanding these difficulties, as well as issues of purely local concern, we are committed to making the tough decisions to bring our budget into balance. We are committed to making the tough decisions to increase the efficiency of our government and to improve the delivery of essential public services to our people. But because progress requires prioritization in the face of increasing competition for scarce resources, our Founding Fathers — including Alexander Hamilton who grew up on St. Croix — had faith that these tough decisions could best be made through the political process by the elected leaders of the people whom they serve.

This bill, however, goes in the opposite direction. It would remove the authority to make tough budgetary decisions from the Governor and the Legislature — the elected representatives of the people — and place it in the hands of an unelected official accountable to no one.

In sum, as I stated in my 2004 State of the Territory Address, it is the duty of the elected officials of the Government of the Virgin Islands to exercise the appropriate fiscal discipline. We can, we must, and we shall do what has to be done ourselves. Accordingly, in the best and honored traditions of this distinguished Committee, I strongly urge you to reject this bill and the undemocratic premises on which it is based.

Thank you, Mr. Chairman.