

A COMMONWEALTH FOR THE VIRGIN ISLANDS: A PROPOSAL FOR AN AUTONOMOUS TERRITORY

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I. INTRODUCTION

Congress granted the Virgin Islands the authority to adopt a constitution in 1976.¹ Prior to being granted authority from Congress, the Virgin Islands attempted to draft their own constitution twice pursuant to local laws. Since being granted authority by Congress, the Virgin Islands have drafted three proposed constitutions.² Each was rejected either by Congress or Virgin Islanders.³ In January 2025, the delegates to the Sixth Constitutional Convention of the Virgin Islands will try again—and hopefully find success where their predecessors did not.⁴

This Article will examine previous constitutional conventions and attempt to provide some suggestions that may be useful to the Sixth Constitutional Convention. This includes the full text of a

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1. An Act to Provide for the Establishment of Constitutions for the Virgin Islands and Guam, Pub. L. No. 94-584, 90 Stat. 2899 (1976).

2. *The Proposed Virgin Islands Constitution from the Fifth Constitutional Convention: Oversight Hearing Before the Subcomm. on Insular Affs., Oceans and Wildlife of the Comm. on Nat. Res.*, 111th Cong. 2 (2010) (statement of Madeleine Bordallo, Del. in Cong., Territory of Guam).

3. A.J. Rao, *Voters Overwhelmingly Push for Sixth Constitutional Convention*, V.I. DAILY NEWS (Nov. 4, 2020), https://www.virginislandsdailynews.com/news/voters-overwhelming-push-for-sixth-constitutional-convention/article_ad866ad1-2a36-51ed-b668-712da7e9175b.html.

4. J.H. Snider, *Key USVI Constitutional Convention Dates*, USVI CONST. CONVENTION CLEARINGHOUSE (Oct. 1, 2023), <https://usvi.concon.info/>.

Draft Constitution for consideration by the Sixth Constitutional Convention, assuming the delegates to the Convention find it useful to their efforts.⁵ This Article will advocate for the use of this Draft Constitution as a template for consideration by the Constitutional Convention. It would create the Commonwealth of the Virgin Islands of the United States, a political entity in the model of the Commonwealth of Puerto Rico and the Commonwealth of the Northern Mariana Islands.

The concept of a “commonwealth” as applied to the governments of America’s territories brings with it a long legal history and well-developed legal principles. Such a government structure will afford the Virgin Islands a level of internal control and autonomy never seen in over a century under the American flag. The efforts to adopt a constitution for the Virgin Islands, and the continuing legal complexities that accompany its status as an unincorporated territory, highlight perhaps the most significant hindrance in the development of Virgin Islands law—the absence of a law school in the Territory. This Article will conclude by examining the negative consequences of the lack of legal education in the Virgin Islands and advocating for the creation of the University of the Virgin Islands School of Law to facilitate the development of constitutional law in the Virgin Islands.

II. A BRIEF HISTORY OF THE VIRGIN ISLANDS

What the Virgin Islands has achieved as a Territory and what is at stake at the Sixth Constitutional Convention is best understood by looking at the evolution of the Virgin Islands as an American territory over the last century.

A. The Virgin Islands Succeeds in Joining the United States in 1917

The United States and Denmark first engaged in negotiation for the sale of Saint Thomas and Saint John in 1867, and in 1868 a referendum was held regarding the transfer.⁶ “The inhabitants remember the day of the voting as the greatest holiday in the

5. See *infra* pt. VII.

6. See *Transfer Day March 31, 1917*, ST. CROIX LANDMARK SOC’Y, <https://www.stcroixlandmarks.org/history/transfer-day/#:~:text=The%20treaty,%20however,%20required> (last visited Oct. 4, 2024).

history of the islands. Guns were fired and all the church bells were rung.”⁷ Voters “marched to the polls cheering and singing ‘The Star-Spangled Banner.’”⁸ “It was said at the time that there never was a national conquest so proud and peaceful,” with only twenty-two votes cast against joining the United States.⁹ Although this early effort was unsuccessful because the bill for the purchase was not allowed to come out of the committee before the Senate, the strong desire among Virgin Islanders to join the United States never subsided.¹⁰

“In 1917, the United States purchased what was then the Danish West Indies from Denmark ‘in exchange for \$25 million in gold and American recognition of Denmark’s claim to Greenland.’”¹¹ Although they had no formal say in the matter, the residents of Saint Croix, Saint Thomas, Saint John, and Water Island—then known as the Danish West Indies—held “an unofficial referendum on the sale of the islands to the United States [that] passed with a vote of 4,727 in favor and only seven against.”¹² Likewise, “the elected Colonial Councils of St. Thomas-St. John and St. Croix unanimously passed resolutions in support of annexation of the islands by the United States.”¹³ The treaty transferring the islands from Denmark to the United States took effect on March 31, 1917.¹⁴

B. Over the Last Century, Congress Has Removed Federal Oversight from All Three Branches of the Virgin Islands Government

“The first Organic Act for the U.S. Virgin Islands was passed in 1917.”¹⁵ In doing so, some basic government customs were established:

7. Isabel Foster, *Would Join America: Natives of Danish West Indies Have Shown Their Strong Feeling*, N.Y. TIMES, Feb. 24, 1916, at 8.

8. *Id.*

9. *Id.*

10. *Id.*

11. *Vooyo v. Bentley*, 901 F.3d 172, 176 (3d Cir. 2018) (en banc) (quoting Act of March 3, 1917, Pub. L. No. 64-389, § 2, 39 Stat. 1132, 1133 (current version at 48 U.S.C. § 1392)).

12. *Balboni v. Ranger Am. of the V.I., Inc.*, 70 V.I. 1048, 1088 n.34 (2019).

13. *Id.*

14. *Malloy v. Reyes*, 61 V.I. 163, 168 n.2 (2014); see V.I. CODE ANN. tit. 1, § 171(a) (2019) (declaring March 31 “Transfer Day”).

15. Michael W. Weaver, *The Territory Federal Jurisdiction Forgot: The Question of Greater Federal Jurisdiction in American Samoa*, 17 PAC. RIM L. & POL’Y J. 325, 336 (2008).

Congress had initially established only a temporary government for the Virgin Islands consisting of a “governor appointed by the President . . . with the consent of the Senate, [and providing that the governor] might be an Army or Navy officer. As a matter of custom, [the governor was] always . . . a naval officer, but he was not technically responsible to the Navy . . . nor was he technically responsible to any department of the Government.”¹⁶

Additionally, “[j]udicial oversight of what became the U.S. Virgin Islands was promptly assigned to the Court of Appeals for the Third Circuit by the Act of March 3, 1917.”¹⁷

Over the following century, a transition from federal administration to local autonomy progressed slowly. In 1927, Congress declared “all persons born in the Virgin Islands . . . on or after February 25, 1927, and subject to the jurisdiction of the United States . . . citizens of the United States at birth.”¹⁸ In 1931, the Virgin Islands was transferred from military to civil administration under the Department of the Interior.¹⁹

In 1936, Congress granted the Virgin Islands government limited autonomy from federal oversight in the Organic Act, “for the stated purpose of ‘provid[ing for] a civil government for the Virgin Islands.’”²⁰ “That Act . . . provided for a municipal council in each municipality [of Saint Thomas/Saint John and Saint Croix] with local legislative powers, a Legislative Assembly with legislative powers for the Virgin Islands as a whole, a Governor to act as chief executive of the Virgin Islands as a whole and of each of the two municipalities, and a district court to exercise the judicial power of the Islands.”²¹ While the municipal councils and Legislative Assembly were democratically elected, the judges of the district court and the governor were appointed by the President.²²

16. *Voys*, 901 F.3d at 180 n.26 (quoting *A Bill to Provide a Civil Government for the Virgin Islands, and for Other Purposes: Hearings on S. 2786 Before the Comm. on Territories and Insular Possessions*, 68th Cong. 3–4 (1924) (statement of A. A. Berle, Jr.)).

17. *Id.* at 176.

18. 8 U.S.C. § 1406(b).

19. *Weaver*, *supra* note 15, at 336.

20. *Burgos v. Gov’t of the V.I.*, 77 V.I. 615, 620 (2023) (quoting Organic Act of the Virgin Islands, Pub. L. No. 74-699, 49 Stat. 1807, 1807 (1936)).

21. *Harris v. Boreham*, 233 F.2d 110, 114 (3d Cir. 1956).

22. §§ 5–6, 20, 49 Stat. at 1808, 1812.

In 1954, Congress granted further autonomy when it superseded the 1936 Organic Act with the Revised Organic Act.²³ “The Revised Organic Act was intended to operate as a ‘new basic charter of government for the territory.’”²⁴ It “effectively serves as a constitution for the Virgin Islands.”²⁵ The Revised Organic Act disbanded the municipal councils and created a single Virgin Islands Legislature for the entire Territory.²⁶

In 1968, Congress eliminated federal control over the executive and legislative branches of the Virgin Islands government, passing the Elective Governor Act.²⁷ This Act provided for the first time that the Virgin Islands governor would be popularly elected by Virgin Islanders instead of appointed by the President.²⁸ The Elective Governor Act also “end[ed] presidential veto power over local legislation, and eliminat[ed] the secretary of the interior’s direct control over the territory.”²⁹

In 1976, Congress “authorized ‘the peoples of the Virgin Islands . . . to organize governments pursuant to constitutions of their own adoption.’”³⁰ This legislation also provided that “[t]he Legislature[] of the Virgin Islands . . . [is] authorized to call [a] constitutional convention[] to draft, within the existing territorial-Federal relationship, [a] constitution[] for the local self-government of the people of the Virgin Islands.”³¹ After five attempts, the Virgin Islands has yet to adopt a constitution.³²

In 1984, Congress provided for the end of federal control over the judicial branch of the Virgin Islands government.³³ In these amendments, “Congress authorized the Virgin Islands Legislature to end the District Court’s role as a territorial court by divesting it

23. Revised Organic Act of the Virgin Islands, Pub. L. No. 83-558, 68 Stat. 497 (1954).

24. *Brow v. Farrelly*, 994 F.2d 1027, 1032 (3d Cir. 1993) (quoting *Virgo Corp. v. Paiewonsky*, 384 F.2d 569, 576 (3d Cir. 1967)).

25. *Bluebeard’s Castle, Inc. v. Gov’t of the V.I.*, 321 F.3d 394, 399 n.9 (3d Cir. 2003) (citing *Callwood v. Enos*, 230 F.3d 627, 630 (3d Cir. 2000)).

26. § 5, 68 Stat. at 498.

27. An Act to Provide for the Popular Election of the Governor of the Virgin Islands, and for Other Purposes, Pub. L. No. 90-496, 82 Stat. 837 (1968).

28. *Id.*

29. Weaver, *supra* note 15, at 336.

30. *James v. deJongh*, 52 V.I. 202, 204 (Super. Ct. 2009) (quoting An Act to Provide for the Establishment of Constitutions for the Virgin Islands and Guam, Pub. L. No. 94-584, § 1, 90 Stat. 2899, 2899 (1976)).

31. *Id.* (first alteration in original).

32. *Hodge v. Bluebeard’s Castle, Inc.*, 62 V.I. 671, 682 n.4 (2015).

33. *Id.* at 682.

of jurisdiction over actions brought under Virgin Islands law.”³⁴ This permitted the Legislature to vest jurisdiction over cases concerning local law in territorial courts comprised of judges appointed by the governor—as opposed to the District Court comprised of judges appointed by the President.³⁵ It also permitted the Legislature to create a local appellate court to serve as the court of last resort for the Territory—a function formerly performed by the U.S. Court of Appeals for the Third Circuit in its review of decisions of the District Court.³⁶

“The Legislature implemented the 1984 amendments incrementally.”³⁷ “On September 5, 1990, it passed Act No. 5594, granting the Superior Court ‘original jurisdiction in all civil actions regardless of the amount in controversy,’ effective October 1, 1991.”³⁸ “The Legislature then passed Act No. 5890 on September 30, 1993, granting the Superior Court ‘original jurisdiction in all criminal actions,’ effective January 1, 1994.”³⁹ “Finally, in Act No. 6687 on October 29, 2004, the Legislature provided for the creation of the Supreme Court of the Virgin Islands, which officially assumed jurisdiction on January 29, 2007.”⁴⁰ Despite the creation of the Supreme Court of the Virgin Islands, Congress still provided the Third Circuit with oversight of the Virgin Islands judicial branch by providing that “for the first fifteen years after the establishment of the Virgin Islands Supreme Court, [the Third Circuit] ‘shall have jurisdiction to review by writ of certiorari all final decisions of the highest court of the Virgin Islands from which a decision could be had.’”⁴¹

In 2012, Congress finally ended federal oversight of the Virgin Islands judicial branch.⁴² Through H.R. 6116, Congress ended the Third Circuit’s certiorari jurisdiction, instead providing that “Chapter 81 of title 28, United States Code, is amended by adding at the end the following: . . . ‘Final judgments or decrees rendered

34. *Id.*

35. *Id.* at 689.

36. *Id.* at 688–89.

37. *Id.* at 682.

38. *Id.* (quoting V.I. CODE ANN. tit. 4, § 76(a) (1991)).

39. *Id.* (quoting V.I. CODE ANN. tit. 4, § 76(b) (1994)).

40. *Id.* at 683 (citing *Hypolite v. People*, 51 V.I. 97, 101 (2009)); *see also* 48 U.S.C. § 1611(a) (“The judicial power of the Virgin Islands shall be vested . . . in such appellate court and lower local courts as . . . established by local law.”).

41. *Pichardo v. V.I. Comm’r of Lab.*, 613 F.3d 87, 94 (3d Cir. 2010) (48 U.S.C. quoting § 1613).

42. Act of Dec. 28, 2012, Pub. L. No. 112-226, § 2, 126 Stat. 1606, 1606.

by the Supreme Court of the Virgin Islands may be reviewed by the Supreme Court by writ of certiorari.”⁴³

Following H.R. 6116, all three branches of the Virgin Islands government are now free from federal oversight. In all practical respects, the three branches now operate with independence similar to one of the fifty states.

C. Despite Local Control, Without a Constitution, the Rights of Virgin Islanders Are Secured Only by Congress Under the
Insular Cases

“In a series of opinions later known as the *Insular Cases*, the Court addressed whether the Constitution, by its own force, applies in any territory that is not a State.”⁴⁴ The *Insular Cases* “held that the Constitution had independent force in the Territories, that was not contingent upon acts of legislative grace.”⁴⁵

In doing so, “the Court created the doctrine of incorporated and unincorporated Territories.”⁴⁶ Incorporated territories were “those Territories destined for statehood from the time of acquisition, and the Constitution was applied to them with full force.”⁴⁷ Unincorporated territories, on the other hand, were “those Territories not possessing that anticipation of statehood. As to them, only ‘fundamental’ constitutional rights were guaranteed to the inhabitants.”⁴⁸ The determination of whether a territory has an anticipation of statehood, and thus whether it is incorporated or unincorporated, is largely based on congressional intent and historical context at the time of acquisition.⁴⁹

43. *Id.*; see *Vooy's v. Bentley*, 901 F.3d 172, 195 (3d Cir. 2018) (en banc) (“H.R. 6116 terminated our jurisdiction over all certiorari petitions from final decisions of the Supreme Court of the Virgin Islands if those petitions were filed on or after December 28, 2012.”).

44. *Boumediene v. Bush*, 553 U.S. 723, 756 (2008) (emphasis added).

45. *Id.* at 757.

46. *Examining Bd. of Eng'rs., Architects & Surveyors v. Flores de Otero*, 426 U.S. 572, 600 n.30 (1976). In *Examining Board of Engineers*, the Court identified the *Insular Cases* to include *De Lima v. Bidwell*, 182 U.S. 1 (1901), *Dooley v. United States*, 182 U.S. 222 (1901), *Armstrong v. United States*, 182 U.S. 243 (1901), and *Downes v. Bidwell*, 182 U.S. 244 (1901). *Id.* at 601. In *United States v. Verdugo-Urquidez*, the Court identified additional *Insular Cases*, including *Balzac v. Porto Rico*, 258 U.S. 298 (1922), *Ocampo v. United States*, 234 U.S. 91 (1914), *Dorr v. United States*, 195 U.S. 138 (1904), and *Hawaii v. Mankichi*, 190 U.S. 197 (1903). 494 U.S. 259, 268 (1990).

47. *Examining Bd. of Eng'rs.*, 426 U.S. at 600 n.30.

48. *Id.*

49. *Downes*, 182 U.S. at 320.

"Pursuant to the *Insular Cases*, Congress freely chooses which portions of the Constitution apply in the unincorporated territories, limited only by vaguely defined 'fundamental' rights."⁵⁰ Despite the Supreme Court's promise that "fundamental' constitutional rights are guaranteed to inhabitants of [the] territories,"⁵¹ for more than a century, federal courts have routinely relied on the *Insular Cases* to justify refusing to extend to the territories constitutional rights considered fundamental in every other context.

An early example is *Balzac v. Porto Rico*, where the Supreme Court held that the right to a jury trial secured by the Sixth Amendment was not a fundamental right and did not apply to the residents of unincorporated territories.⁵² Since then, the Supreme Court held that "trial by jury in criminal cases is fundamental to the American scheme of justice," requiring the states to recognize "a right of jury trial in all criminal cases which[,] were they to be tried in a federal court[,] would come within the Sixth Amendment's guarantee."⁵³ Indeed, "it seems peculiarly anomalous to say that trial before a civilian judge and by an independent jury picked from the common citizenry is not a fundamental right."⁵⁴ Despite this, federal courts have routinely rejected extending this "fundamental" Sixth Amendment right to a jury trial to "unincorporated" territories.⁵⁵

50. Susan K. Serrano, *Elevating the Perspectives of U.S. Territorial Peoples: Why the Insular Cases Should Be Taught in Law School*, 21 J. GENDER RACE & JUST. 395, 396 (2018).

51. *Verdugo-Urquidez*, 494 U.S. at 268 (quoting *Dorr*, 195 U.S. at 148).

52. 258 U.S. 298, 309 (1922) ("The citizen of the United States living in Porto Rico cannot there enjoy a right of trial by jury under the federal Constitution. . .").

53. *Duncan v. Louisiana*, 391 U.S. 145, 149 (1968).

54. *Reid v. Covert*, 354 U.S. 1, 9 (1957) (plurality opinion).

55. See, e.g., *N. Mariana Islands v. Atalig*, 723 F.2d 682, 688–89 (9th Cir. 1984) (holding the Sixth Amendment doesn't apply in the Northern Mariana Islands); *Gov't of the V.I. v. Bodle*, 427 F.2d 532, 533 n.1 (3d Cir. 1970) (holding the Sixth Amendment only applies in the Virgin Islands because "Congress . . . has provided the right to a jury trial in criminal cases to the inhabitants of the Virgin Islands by virtue of the Revised Organic Act of 1954"); *King v. Morton*, 520 F.2d 1140, 1148 (D.C. Cir. 1975) (declining to hold the Sixth Amendment right to a jury trial is fundamental as applied to American Samoa and remanding). A notable exception is the United States Court for Berlin, "created by the High Commissioner for Germany" with "the mandate . . . limited . . . to criminal cases within the U.S. sector of Berlin." David J. Bederman, *Extraterritorial Domicile and the Constitution*, 28 VA. J. INT'L L. 451, 479–80 (1988). That court, in a case heard by a federal judge from New Jersey, determined "the holdings in the *Insular Cases* that trial by jury in criminal cases was not 'fundamental' in American law . . . was thereafter authoritatively voided in *Duncan*." *United States v. Tiede*, 86 F.R.D. 227, 252 (U.S. Ct. Berlin 1979) (Stern, J.). And so Germans living in American-occupied post-war Berlin "charged with criminal offenses

Cases like *Balzac* resulted in countless lower court opinions sanctioning government actions that would be considered egregious civil-rights violations in the mainland United States. For example, shortly after *Balzac* was decided, members of the Virgin Islands press were prosecuted for libel after publishing articles critical of the police and the courts.⁵⁶ More recently, the U.S. Courts of Appeals for the District of Columbia Circuit and the Tenth Circuit expressly invoked the *Insular Cases* to reject a claim to birthright citizenship made by American Samoans.⁵⁷

As a result of the *Insular Cases*, constitutional rights in the Virgin Islands do not exist. To the extent any right secured by the Constitution exists in the Virgin Islands at all, it is through congressional action alone. All rights of Virgin Islanders—even a right as fundamental as birthright citizenship—are secured only by federal statute subject to revision or repeal by Congress at any time. This highlights why it is so critical for the Virgin Islands to enact a constitution. Only through the adoption of a Virgin Islands constitution containing a bill of rights will Virgin Islanders secure constitutional rights that are not subject to the whims of Congress.

III. PREVIOUS EFFORTS TO ADOPT A VIRGIN ISLANDS CONSTITUTION

In granting the Virgin Islands the ability to adopt a constitution, Congress provided that such a constitution must:

- (1) recognize, and be consistent with, the sovereignty of the United States over the Virgin Islands . . . and the supremacy of the provisions of the Constitution, treaties, and laws of the United States applicable to the Virgin Islands . . . including, but not limited to, those provisions of the . . . Revised Organic Act of the Virgin Islands . . . which do not relate to local self-government.
- (2) provide for a republican form of government, consisting of three branches: executive, legislative, and judicial;

[by the United States] have constitutional rights, including the right to a trial by jury,” while Americans living in U.S. territories still do not. *Id.* at 228.

56. See, e.g., *People v. Francis*, 1 V.I. 66, 87 (D.V.I. 1925) (convicting editor of local newspaper of libel for publishing articles critical of the police); *In re Contempt Procs. Against Francis*, 1 V.I. 91, 95 (D.V.I. 1925) (holding same editor in contempt for publishing article critical of criminal prosecutions conducted without a jury).

57. *Tuaua v. United States*, 788 F.3d 300, 308–10 (D.C. Cir. 2015); *Fitisemanu v. United States*, 1 F.4th 862, 873–81 (10th Cir. 2021).

- (3) contain a bill of rights;
- (4) deal with the subject matter of those provisions of the Revised Organic Act of the Virgin Islands of 1954, as amended . . . which relate to local self-government;

. . . .

- (6) provide for a system of local courts consistent with the provisions of the Revised Organic Act of the Virgin Islands, as amended⁵⁸

“[I]n 1964, the Virgin Islands had its first Constitutional Convention.”⁵⁹ This Convention adopted a “Resolution on Status” providing:

- (1) The People of the Virgin Islands are unalterably opposed to annexation of the Virgin Islands by any State of the Union as a county, city or precinct, or to any commonwealth or other territory under the jurisdiction of the United States.
- (2) The People of the Virgin Islands are unalterably opposed to independence from the United States of America.
- (3) The People of the Virgin Islands desire to have the Virgin Islands remain an unincorporated territory under the constitutional system of the United States with the fullest measure of internal self-government and in the closest association with the United States of America, and the Virgin Islands shall hereafter be designated an “autonomous territory.”⁶⁰

The Virgin Islands has since had five constitutional conventions.⁶¹ Each proposed constitution coming out of these conventions failed, being rejected either by Virgin Islands voters or Congress.⁶² In the most recent effort, the Fifth Constitutional

58. Act of Oct. 21, 1976, Pub. L. No. 94-584, § 2(b), 90 Stat. 2899, 2899 (enabling the Virgin Islands and Guam to establish constitutions), *amended by* Act of Dec. 24, 1980, Pub. L. No. 96-597, § 501, 94 Stat. 3477, 3479 and Act of June 30, 2010, Pub. L. No. 111-194, sec. 2, § 5, 124 Stat. 1309, 1310–1311.

59. Jon M. Van Dyke, *The Evolving Legal Relationships Between the United States and Its Affiliated U.S.-Flag Islands*, 14 U. HAW. L. REV. 445, 497 (1992).

60. *Id.* at 498 (quoting ARNOLD H. LEIBOWITZ, *DEFINING STATUS: A COMPREHENSIVE ANALYSIS OF UNITED STATES TERRITORIAL RELATIONS* 272 (1989)).

61. Act of Jan. 19, 2023, No. 8681, 2022 V.I. Sess. Laws 367, 368.

62. Dep’t of Just. Views on the Proposed Const. Drafted by the Fifth Const. Convention of the U.S.V.I., 34 Op. O.L.C. 73, 75–76 (2010) [hereinafter Dep’t of Just. Views] (rejection

Convention proposed a constitution in 2009.⁶³ This proposal was criticized by the U.S. Department of Justice Office of Legal Counsel and ultimately rejected by Congress.⁶⁴

The Office of Legal Counsel identified several objections to the proposed constitution.⁶⁵ These objections noted that the proposed constitution did not comply with the requirements imposed by Congress, including its failure to expressly recognize “United States sovereignty and the supremacy of federal law”; “provisions conferring legal advantages on certain groups defined by place and timing of birth, timing of residency, or ancestry”; and “residence requirements for certain offices,” among others.⁶⁶

Based on these concerns, Congress returned the proposed constitution to the Virgin Islands for revision. The Virgin Islands Legislature passed legislation to convene a Fifth Revision Convention, but that convention did not take action to revise the proposed constitution or resubmit it to the President by the deadline set in the legislation.⁶⁷

On January 19, 2023, the Governor of the Virgin Islands signed Act No. 8681.⁶⁸ This Act provided for “a Sixth Constitutional Convention to convene after delegates are elected during the November 2024 general election.”⁶⁹ The mission of this convention is to “use, revise, modify, substitute, or delete parts of the Revised Organic Act of 1954” and to “use, revise, modify, substitute, or delete parts of the 5th Constitutional Convention draft document if the provisions in the proposed constitution are not inconsistent with the U.S. Department of Justice Memorandum.”⁷⁰

IV. CREATING A COMMONWEALTH OF THE VIRGIN ISLANDS

Adopting a constitution represents the final step in the evolution of the Virgin Islands from a territory fully under federal

by voters); *Virgin Islands Begin 3d Attempt to Write Their Own Constitution*, N.Y. TIMES, May 22, 1977, at 18 (rejection by Congress).

63. Dep’t of Just. Views, *supra* note 62, at 76.

64. *Id.* at 73–74; Act of June 30, 2010, Pub. L. No. 111-194, § 1, 124 Stat. 1309, 1310.

65. Dep’t of Just. Views, *supra* note 62, at 73–74.

66. *Id.*

67. Act of Jan. 19, 2023, No. 8681, 2022 V.I. Sess. Laws 367, 369.

68. *Id.* at 367.

69. *Id.* § 1(a).

70. *Id.* § 1(b)(2)–(3).

control to an autonomous, fully self-governing territory. In an effort to assist the Sixth Constitutional Convention (to the extent any such assistance is desired), the Appendix to this Article provides a draft of a possible constitution for consideration by the Sixth Constitutional Convention. This draft complies with the requirements imposed by Congress, addresses the concerns expressed by the Office of Legal Counsel, and follows the requirements of Act No. 8681. The draft is as simple as possible, providing a basic framework for constitutional governance. This is intended to omit provisions of previous constitutional proposals that may be deemed controversial or objectionable to the Department of Justice or Congress, and give the Draft Constitution the best chance for meeting the approval of Congress and the Virgin Islands electorate. Although previous proposed constitutions have provided more detailed frameworks and requirements for government action, such provisions (to the extent consistent with federal law) could be added by the Virgin Islands electorate by amendment without the need for congressional approval.

This draft includes provisions borrowed from previous proposed constitutions, the constitutions of the other territories, and the Revised Organic Act. This draft would create a “Commonwealth of the Virgin Islands” in the model of Puerto Rico.⁷¹ The “Commonwealth” framework is proposed because it carries with it the existing legal doctrines and principles developed during the last seventy years of Puerto Rico’s experience as a “commonwealth.”⁷² These developed legal principles would recognize “local autonomy” of the Virgin Islands while “voluntarily united with the United States.”⁷³

The draft would maintain, and constitutionalize, the current system of government as it exists under the rubric of a self-governing Commonwealth territory. In achieving the aims expressed in previous constitutional conventions, and requirements imposed by Congress, this draft would create a Commonwealth recognizing the political union between the Virgin Islands and the United States under the sovereignty of the United States.

71. P.R. CONST. art. I, § 1.

72. *Puerto Rico v. Sanchez Valle*, 579 U.S. 59, 63 (2016).

73. *Commonwealth*, BLACK’S LAW DICTIONARY (12th ed. 2024).

The Commonwealth model provides the clearest and most definite legal status possible for the Virgin Islands. As demonstrated in the context of Puerto Rico, the commonwealth status represents “a unique political relationship, built on the island’s evolution into a constitutional democracy exercising local self-rule.”⁷⁴ In “1952 . . . Congress relinquished its control over the organization of the local affairs of the island and granted Puerto Rico a measure of autonomy comparable to that possessed by the States.”⁷⁵ “A body politic’—a commonwealth—was created.”⁷⁶ “The effect was to confer upon the territory many of the attributes of quasi sovereignty possessed by the states.”⁷⁷

As a result, “Puerto Rico, like a state, is an autonomous political entity, ‘sovereign over matters not ruled by the Constitution.’”⁷⁸ “Puerto Rico possesses local autonomy and has full control over affairs of insular concern—except to the extent that those affairs are effected by the federal exercise of power.”⁷⁹

This draft would also constitutionalize the rights now possessed by Virgin Islanders only by virtue of congressional action, including a robust bill of rights conferring those rights guaranteed by the U.S. Constitution and guaranteed since 1954 through the Revised Organic Act. This draft is respectfully offered to the extent it may be useful to the Sixth Constitutional Convention.

V. LEGAL EDUCATION IN THE VIRGIN ISLANDS

The ongoing efforts to maximize local autonomy and develop a body of Virgin Islands constitutional law highlight one of the greatest impediments to this effort—the lack of a law school in the Virgin Islands.

74. *Sanchez Valle*, 579 U.S. at 63.

75. *Examining Bd. of Eng’rs., Architects & Surveyors v. Flores de Otero*, 426 U.S. 572, 597 (1976).

76. *Puerto Rico v. Shell Co.*, 302 U.S. 253, 262 (1937) (quoting 48 U.S.C. § 733).

77. *Id.*

78. *Rodriguez v. Popular Democratic Party*, 457 U.S. 1, 8 (1982) (quoting *Calero-Toledo v. Pearson Yacht Leasing Co.*, 416 U.S. 663, 673 (1974)).

79. *United States v. Lebrón-Caceres*, 157 F. Supp. 3d 80, 100 (D.P.R.) (quoting David M. Helfeld, *Congressional Intent and Attitude Toward Public Law 600 and the Constitution of the Commonwealth of Puerto Rico*, 21 REV. JURIDICA U. P.R. 255, 314 (1952)), amended by No. 15-279 (PAD), 2016 WL 204447 (D.P.R. Jan. 15, 2016).

The Virgin Islands legal system exists in a complicated web of federal and local law developed within the constitutional framework created by the *Insular Cases*. As others have noted, the *Insular Cases* “should be taught in law school because they are valuable for revealing the perspective of those most affected by them.”⁸⁰ By doing so through the creation of a Virgin Islands law school, the Virgin Islands would benefit from a new generation of lawyers educated in a manner uniquely suited to deal with the legal complexities in the Virgin Islands.

A Virgin Islands law school would work to increase the number of lawyers practicing in the Virgin Islands and help alleviate the access to justice issues facing the Territory. In Alaska, the only state without a law school, the idea of creating a law school has been rejected because “[t]here is still no need to increase the supply of lawyers by establishing a law school in Alaska.”⁸¹

This is not true in the Virgin Islands. There are only about 670 active members of the Virgin Islands Bar Association.⁸² Of these, only about 350 actually live and practice in the Virgin Islands.⁸³ A contributing factor to this is likely the fact that Virgin Islanders must attend law schools in the mainland United States to become attorneys, and then must make the decision of whether to immediately return home after law school to sit for the Virgin Islands bar exam, or take the easier course of sitting for the exam in the state where they studied and have lived for the preceding three years. This would appear to contribute to the low number of attorneys practicing in the Virgin Islands.⁸⁴

The creation of a Virgin Islands law school—such as a University of the Virgin Islands School of Law—that would focus its curriculum on the future Virgin Islands constitution and other

80. Serrano, *supra* note 50, at 399.

81. Mary Killorin, *An Alaskan Law School: Is It Feasible?*, SCHOLARWORKS@UA 1 (Feb. 2004), <https://scholarworks.alaska.edu/bitstream/handle/11122/12166/lawschool.pdf?sequence=1&isAllowed=y>.

82. *Advanced Member Search*, V.I. BAR ASS'N, <https://www.usvibar.org/search/advanced.asp> (choose “Regular Admission” checkbox; then click “Continue”; then click “Search”) (last visited Sept. 21, 2024).

83. *Id.* (choose “Regular Admission” checkbox; then click “Continue”; then choose “Virgin Islands, U.S.” from “Country” dropdown; then click “Search”) (last visited Sept. 21, 2024).

84. See Ernice Gilbert, ‘*St. Croix Has So Much Potential Right Now*’: *Student Ignites Hope Through Sion Farm Entrance Mural*, V.I. CONSORTIUM (June 7, 2015), <https://wp.viconsortium.com/?p=23571> (noting “the youth brain drain problem affecting the Virgin Islands as students . . . leave the territory for higher education and never return”).

legal issues facing the Territory would be of significant benefit to the development of Virgin Islands law and the judicial branch.

VI. CONCLUSION

The Virgin Islands has made considerable progress toward self-governance since becoming a U.S. territory. Initially granted only a temporary government, all three of the branches of the government of the Virgin Islands now function without federal oversight. But inhabitants of the Virgin Islands are not guaranteed fundamental rights under the U.S. Constitution as a result of the Supreme Court's *Insular Cases*. All rights of Virgin Islanders are secured by federal statute and subject to revision or repeal by Congress at any moment. Only the promulgation of a Virgin Islands Constitution will transition the Virgin Islands from a territory under federal control to a fully self-governing territory. The Draft Constitution below represents the culmination of the five prior Virgin Islands Constitutional Conventions and seeks to address the issues identified by the U.S. Department of Justice and Congress regarding previously proposed constitutions. The Draft Constitution is respectfully submitted for use by the Sixth Constitutional Convention in the hope that it will aid the Convention in creating an autonomous Commonwealth of the Virgin Islands.

VII. APPENDIX

A DRAFT CONSTITUTION FOR CONSIDERATION BY THE SIXTH CONSTITUTIONAL CONVENTION OF THE VIRGIN ISLANDS

PREAMBLE⁸⁵

We the people of the Virgin Islands, assuming the responsibilities of self-government in political union with the United States, and in order to promote unity among our islands for ourselves and our posterity, promote the general welfare, protect

85. This language is based on the preamble of the constitution proposed by the Fourth Constitutional Convention of the Virgin Islands (1981). V.I. CONST. pmbl. (proposed Aug. 1, 1980) (received Congressional approval by Act of July 9, 1981, Pub. L. 97-21, 95 Stat. 105, which was rejected by the voters).

the fundamental rights and freedoms of the individual, ensure political, social, and economic justice, maintain a representative government, protect our culture and natural resources, and preserve the identity of the Virgin Islands, do ordain and establish the Commonwealth of the Virgin Islands of the United States under this Constitution.

ARTICLE I ORGANIZATION OF GOVERNMENT

Section 1 Commonwealth of the Virgin Islands of the United States Established

The Commonwealth of the Virgin Islands of the United States is hereby established under this Constitution,⁸⁶ subject to the sovereignty of the United States and the supremacy of the provisions of the Constitution, treaties, and laws of the United States applicable to the Virgin Islands.⁸⁷ The Commonwealth includes the territorial domain, islands, cays, and waters acquired by the United States through cession of the Danish West Indian Islands by the convention between the United States of America and His Majesty the King of Denmark entered into August 4, 1916, and ratified by the United States Senate on September 7, 1916.⁸⁸

86. This Section is based on the Puerto Rico Constitution: "The Commonwealth of Puerto Rico is hereby constituted. Its political power emanates from the people and shall be exercised in accordance with their will, within the terms of the compact agreed upon between the people of Puerto Rico and the United States of America." P.R. CONST. art. I, § 1.

87. This language comes from the Act of Congress authorizing the creation of a Virgin Islands constitution, requiring "[s]uch constitution[] . . . [to] recognize, and be consistent with, the sovereignty of the United States over the Virgin Islands . . . and the supremacy of the provisions of the Constitution, treaties, and laws of the United States applicable to the Virgin Islands." Act of Oct. 21, 1976, Pub. L. 94-584, § 2(b)(1), 90 Stat. 2899, 2899 *amended* by Act of Dec. 24, 1980, Pub. L. 96-597, Title V, § 501, 94 Stat. 3477, 3479, and Act of June 30, 2010, Pub. L. 111-194, sec. 2, § 5, 124 Stat. 1309, 1310.

88. This language is based on the Revised Organic Act:

The provisions of this chapter and the name 'Virgin Islands' as used in this chapter, shall apply to and include the territorial domain, islands, cays, and waters acquired by the United States through cession of the Danish West Indian Islands by the convention between the United States of America and His Majesty the King of Denmark entered into August 4, 1916, and ratified by the Senate on September 7, 1916 (39 Stat. 1706). The Virgin Islands as above described are declared an unincorporated territory of the United States of America.

48 U.S.C. § 1541(a).

Section 2 Form of Government

The government of the Commonwealth shall be republican in form and shall consist of three branches: Legislative, Executive, and Judicial.⁸⁹

Section 3 Powers of Government

(a) The government of the Commonwealth shall have the powers set forth in this Constitution and shall have the right to sue by such name and in cases arising out of contract, to be sued. No tort action shall be brought against the Commonwealth or against any officer or employee of the Commonwealth in an official capacity without the consent of the Legislature.⁹⁰

(b) The capital and seat of government of the Commonwealth shall be located at the city of Charlotte Amalie, in the island of Saint Thomas.⁹¹ Any branch of government may temporarily or periodically hold any proceeding at any location in the Commonwealth in accordance with law.

(c) All members of the Legislature of the Commonwealth, the Governor, the Lieutenant Governor, all justices or judges of the courts of the Commonwealth, and all officials of the Commonwealth who report directly to the Governor shall be citizens of the United States.⁹²

89. This language is required by the Act of Congress authorizing the creation of a Virgin Islands constitution, requiring “[s]uch constitution[] . . . [to] provide for a republican form of government, consisting of three branches: executive, legislative, and judicial.” Act of Oct. 21, 1976, Pub. L. 94-584, § 2(b)(2), 90 Stat. 2899, 2899 *amended by* Act of Dec. 24, 1980, Pub. L. 96-597, Title V, § 501, 94 Stat. 3477, 3479; Act of June 30, 2010, Pub. L. 111-194, § 2, 124 Stat. 1309, 1310.

90. This language is based on the Revised Organic Act:

The government of the Virgin Islands shall have the powers set forth in this chapter and shall have the right to sue by such name and in cases arising out of contract, to be sued: *Provided*, [t]hat no tort action shall be brought against the government of the Virgin Islands or against any officer or employee thereof in his official capacity without the consent of the legislature constituted by this chapter.

§ 1541(b).

91. This language is based on the Revised Organic Act: “The capital and seat of government of the Virgin Islands shall be located at the city of Charlotte Amalie, in the island of Saint Thomas.” *Id.*

92. This language is based on the Revised Organic Act: “All members of the Legislature of the Virgin Islands, the Governor, the Lieutenant Governor, all judges and all officials of the government of the Virgin Islands who report directly to the Governor shall be citizens of the United States.” *Id.* § 1543.

ARTICLE II BILL OF RIGHTS⁹³**Section 1 Fundamental Rights**

(a) The dignity of the human being is inviolable. No person shall be deprived of life, liberty, or property without due process of law or be denied the equal protection of the laws. Legislative measures designed to protect or assist persons or categories of persons disadvantaged by discrimination may be undertaken.

(b) Equality of rights under the law shall not be denied or abridged, and no person shall be discriminated against on account of race, color, sex, gender, sexual orientation, place of birth, socio-economic class, national origin, political and religious belief, age, or disability.

Section 2 Freedom of Religion, Speech, Press, Assembly, and Petition

(a) No law shall be enacted respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech or of the press, or the right of the people to assemble peaceably, or the right to petition for the redress of grievances.

(b) No political or religious test other than an oath to support this Constitution, the laws of the Commonwealth, and the Constitution of the United States, shall be required as a qualification to any office or public trust under the Commonwealth.

93. A bill of rights is required by the Act of Congress authorizing the creation of a Virgin Islands Constitution, requiring "[s]uch constitution[] . . . [to] contain a bill of rights." An Act to Provide for the Establishment of Constitutions for the Virgin Islands and Guam of Oct. 21, 1976, Pub. L. No. 94-584, § 2(b)(3), 90 Stat. 2899, 2899 *amended by* Act of Dec. 24, 1980, Pub. L. No. 96-597, Title V, § 501, 94 Stat. 3477, 3479; Act of June 30, 2010, Pub. L. No. 111-194, § 2, 124 Stat. 1309, 1310. This Article is based on Article I of the Constitution proposed by the Fifth Constitutional Convention of the Virgin Islands (2009). V.I. CONST. art. 1 (proposed May 26, 2009) (returned by Congress to the Virgin Islands for revision, which did not resubmit to the President by the deadline). This Article is also based on, and consistent with, the existing Bill of Rights in the Revised Organic Act. *See* 48 U.S.C. § 1561.

Section 3 Right of Privacy

A person has the right to a reasonable expectation of privacy in the conduct of personal affairs and communications that shall not be infringed.

Section 4 Right to Know

A person shall have the right to examine any public document and to observe the deliberation of any executive agency of the Commonwealth subject only to exceptions provided by law and the right of individuals to privacy in their personal affairs.

Section 5 Searches and Seizures

A person shall have the right to be secure in their person, dwelling, papers, possessions, and privacy, and such right shall not be abridged by unreasonable search and seizure. No warrant for arrest or search shall be issued except upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, thing to be seized, or person to be arrested. Evidence obtained in violation of the rights of the accused shall not be admissible as evidence against the accused in a criminal trial.

Section 6 Rights of the Accused

(a) No criminal accusation may be brought against any person except upon indictment by grand jury.

(b) In all criminal prosecutions, the accused shall be presumed innocent unless and until proven guilty beyond a reasonable doubt, shall have the right to a speedy, public trial, and trial by impartial jury, where the penalty may be imprisonment for more than six months; to be informed of the nature and cause of the accusation, to have effective assistance of counsel, and where the accused may be imprisoned, the assistance of counsel at public expense, if necessary; to have compulsory process for obtaining witnesses, and to confront the witnesses against the accused.

(c) Any person who is subjected to a custodial police interrogation shall, before questioning, be advised of the right to remain silent, that any statement made may be used as evidence

in a criminal prosecution, and of the right to the presence of an attorney, either retained or appointed.

(d) Excessive bail shall not be required, nor excessive fines imposed, nor cruel or unusual punishment inflicted. All persons shall be bailable by sufficient sureties in the case of criminal offenses, except for first-degree murder when the proof is evident or the presumption great.

(e) No person shall be held to answer for a criminal offense without due process of law, and no person for the same offense shall be twice put in jeopardy of punishment, nor shall the accused be compelled in any criminal cause to give evidence favoring the prosecution. The failure of an accused to testify shall not be taken into consideration or commented upon to the detriment of the accused. No person shall sit as judge or magistrate in any case in which the person has been engaged as attorney or prosecutor.

(f) All civil rights shall be restored to a person convicted of an offense upon the completion of any sentence served and any period of probation or parole, subject to reasonable limitation as may be proscribed by law.

Section 7 Prohibition of Slavery

Slavery and involuntary servitude are prohibited and shall not exist in the Commonwealth.

Section 8 No Imprisonment for Debt

No person shall be imprisoned or suffer forced labor for debt.

Section 9 Habeas Corpus

All persons have the right to seek a writ of habeas corpus and such shall not be unreasonably denied.

Section 10 Protection of Property

Private property shall not be taken for public use without the payment of just compensation. Private property shall only be taken for a substantial and direct public benefit.

Section 11 Restrictions of Legislation

No ex post facto law, bill of attainder, or law impairing the obligation of contracts shall be enacted.

Section 12 Quartering of Militia

No militia, in time of peace or in time of war, shall be quartered in any house without the consent of the owner, except as provided by law.

Section 13 Trial by Jury

Trial by jury shall be preserved inviolate.

Section 14 Right to a Healthful Environment

Every person has the right to a reasonably healthful environment and the enforcement of this right as may be provided by law.

Section 15 Right Against Capital Punishment

No person shall be subject to capital punishment.

Section 16 Right to Vote

The franchise shall be vested in the residents of the Commonwealth who are citizens of the United States and eighteen years of age or over. No property, language, or income qualification shall ever be imposed upon or required of any voter, nor shall any discrimination in qualification be made or based upon difference in race, color, sex, sexual orientation, or religious belief. A reasonable minimum period of residency in the Commonwealth may be required by law.⁹⁴

94. This Section is based on the Revised Organic Act:

The franchise shall be vested in residents of the Virgin Islands who are citizens of the United States, twenty-one years of age or over. Additional qualifications may be prescribed by the legislature: *Provided, however*, [t]hat no property, language, or income qualification shall ever be imposed upon or required of any voter, nor shall

Section 17 Reservation and Implementation of Rights

The preceding enumeration of rights shall not be construed restrictively, nor shall it be construed to deny or disparage other rights retained by the people.⁹⁵ All people shall have the right to enforce any right guaranteed by this Constitution in the courts of the Commonwealth as provided by law.

ARTICLE III LEGISLATIVE BRANCH

Section 1 Powers of the Legislature

The legislative power and authority of the Commonwealth shall be vested in the Legislature, consisting of one house, and shall extend to all subjects consistent with this Constitution and the Constitution and laws of the United States applicable to the Commonwealth.⁹⁶

Section 2 Composition of the Legislature

The Legislature shall be composed of members to be known as Senators. The number of such Senators shall be determined by the laws of the Commonwealth. The apportionment of the Legislature shall be as provided by the laws of the Commonwealth. Such apportionment shall not deny to any person in the Virgin Islands the equal protection of the law.⁹⁷

any discrimination in qualification be made or based upon difference in race, color, sex, or religious belief.

48 U.S.C. § 1542(a).

95. U.S. CONST. amend. IX.

96. This Section is based on the Revised Organic Act: "The legislative power and authority of the Virgin Islands shall be vested in a legislature, consisting of one house, to be designated the 'Legislature of the Virgin Islands', [sic] herein referred to as the legislature." 48 U.S.C. § 1571(a).

97. This Section is based on the Revised Organic Act:

The legislature shall be composed of members to be known as senators. The number of such senators shall be determined by the laws of the Virgin Islands. The apportionment of the legislature shall be as provided by the laws of the Virgin Islands: *Provided*, [t]hat such apportionment shall not deny to any person in the Virgin Islands the equal protection of the law.

Id. § 1571(b).

Section 3 Terms of Office

The term of office of each member of the Legislature shall be two years. The term of office of each member shall commence on the second Monday in January following the general election.⁹⁸

Section 4 Qualifications of Members

No person shall be eligible to be a member of the Legislature who is not a citizen of the United States, who has not attained the age of twenty-one years, who is not a qualified voter in the Commonwealth, who has not been a bona fide resident of the Commonwealth for at least three years immediately preceding the date of the election in which the person is a candidate, or who has been convicted of a felony or of a crime involving moral turpitude and has not received a pardon restoring the person's civil rights.⁹⁹

Section 5 Appointment of Electoral Officers

All officers and employees charged with the duty of directing the administration of the electoral system of the Commonwealth and its representative districts shall be appointed in such manner as the Legislature may by law direct, provided that members of boards of elections, which entities of the Commonwealth have been duly organized and established by the Commonwealth, shall be popularly elected.¹⁰⁰

98. This Section is based on the Revised Organic Act: "The term of office of each member of the legislature shall be two years. The term of office of each member shall commence on the second Monday in January following his election." *Id.* § 1572(a).

99. This Section is based on the Revised Organic Act:

No person shall be eligible to be a member of the legislature who is not a citizen of the United States, who has not attained the age of twenty-one years, who is not a qualified voter in the Virgin Islands, who has not been a bona fide resident of the Virgin Islands for at least three years next preceding the date of his election, or who has been convicted of a felony or of a crime involving moral turpitude and has not received a pardon restoring his civil rights. Federal employees and persons employed in the legislative, executive or judicial branches of the government of the Virgin Islands shall not be eligible for membership in the legislature.

Id. § 1572(b).

100. This Section is based on the Revised Organic Act:

All officers and employees charged with the duty of directing the administration of the electoral system of the Virgin Islands and its representative districts shall be appointed in such manner as the legislature may by law direct: *Provided, however,*

Section 6 Immunity of Members

No member of the Legislature shall be held to answer before any tribunal other than the Legislature for any speech or debate in the Legislature and the members shall in all cases, except treason, felony, or breach of the peace, be privileged from arrest during their attendance at the sessions of the Legislature and in going to and returning from the same.¹⁰¹

Section 7 Compensation and Allowances

Each member of the Legislature shall be paid such compensation and shall receive such additional allowances or benefits as may be fixed by law. Such compensation, allowances, or benefits, together with all other legislative expenses, shall be appropriated by, and paid out of funds of, the Commonwealth.¹⁰²

Section 8 Limitations on Holding Other Office

No member of the Legislature shall hold or be appointed to any office which has been created by the Legislature, or the salary or emoluments of which have been increased, during the term for which the member was elected, or during one year after the expiration of such term.¹⁰³

[t]hat members of boards of elections, which entities of government have been duly organized and established by the government of the Virgin Islands, shall be popularly elected.

Id. § 1572(c).

101. This Section is based on the Revised Organic Act:

No member of the legislature shall be held to answer before any tribunal other than the legislature for any speech or debate in the legislature and the members shall in all cases, except treason, felony, or breach of the peace, be privileged from arrest during their attendance at the sessions of the legislature and in going to and returning from the same.

Id. § 1572(d).

102. This Section is based on the Revised Organic Act:

Each member of the legislature shall be paid such compensation and shall receive such additional allowances or benefits as may be fixed under the laws of the Virgin Islands. Such compensation, allowances, or benefits, together with all other legislative expenses, shall be appropriated by, and paid out of funds of, the government of the Virgin Islands.

Id. § 1572(e).

103. This Section is based on the Revised Organic Act:

Section 9 General Powers; Parliamentary Rules

The Legislature shall be the sole judge of the elections and qualifications of its members, shall have and exercise all the authority and attributes inherent in legislative assemblies, and shall have the power to adopt rules governing its procedures, institute and conduct investigations, issue subpoenas to witnesses and other parties concerned, and administer oaths.¹⁰⁴

Section 10 Vacancies

The Legislature shall by law provide the procedure for filling any vacancy in the office of a member of the Legislature that shall arise.¹⁰⁵

Section 11 Sessions of the Legislature

Regular sessions of the Legislature shall be held annually, commencing on the second Monday in January (unless the Legislature shall by law fix a different date), and shall continue for such term as the Legislature may provide. The Governor may call special sessions of the Legislature at any time when the public interest may require it. No legislation shall be considered at any special session other than that specified in the call therefor or in any special message by the Governor to the Legislature while in such session. All sessions of the Legislature shall be open to the public.¹⁰⁶

No member of the legislature shall hold or be appointed to any office which has been created by the legislature, or the salary or emoluments of which have been increased, while he was a member, during the term for which he was elected, or during one year after the expiration of such term.

Id. § 1572(f).

104. This Section is substantially identical to the Revised Organic Act:

The legislature shall be the sole judge of the elections and qualifications of its members, shall have and exercise all the authority and attributes, inherent in legislative assemblies, and shall have the power to institute and conduct investigations, issue subpoena [sic] to witnesses and other parties concerned, and administer oaths.

Id. § 1572(g).

105. This Section is based on the Revised Organic Act: "The Legislature of the Virgin Islands shall by law provide the procedure for filling any vacancy in the office of member of the legislature." *Id.* § 1572(h).

106. This Section is based on the Revised Organic Act:

Section 12 Scope of Authority and Limitations

The legislative authority and power of the Commonwealth shall extend to all rightful subjects of legislation not inconsistent with this Constitution or the Constitution and laws of the United States applicable to the Commonwealth, but no law shall be enacted that would impair rights existing or arising by virtue of this Constitution or the Constitution or laws of the United States.¹⁰⁷

Section 13 Legislative Procedure

(a) The number of members of the Legislature needed to constitute a quorum shall be determined by the laws of the Commonwealth. No bill shall become a law unless it shall have been passed at a meeting, at which a quorum was present, by the

Regular sessions of the legislature shall be held annually, commencing on the second Monday in January (unless the legislature shall by law fix a different date), and shall continue for such term as the legislature may provide. The Governor may call special sessions of the legislature at any time when in his opinion the public interest may require it. No legislation shall be considered at any special session other than that specified in the call therefor or in any special message by the Governor to the legislature while in such session. All sessions of the legislature shall be open to the public.

Id. § 1573(a).

107. This Section is based on the Revised Organic Act:

The legislative authority and power of the Virgin Islands shall extend to all rightful subjects of legislation not inconsistent with this chapter or the laws of the United States made applicable to the Virgin Islands, but no law shall be enacted which would impair rights existing or arising by virtue of any treaty or international agreement entered into by the United States, nor shall the lands or other property of nonresidents be taxed at a higher rate than the lands or other property of residents.

Id. § 1574(a).

affirmative vote of a majority of the members present and voting, which vote shall be by yeas and nays.¹⁰⁸

(b) The enacting clause of all acts shall be as follows: “Be it enacted by the Legislature of the Commonwealth of the Virgin Islands of the United States.”¹⁰⁹

(c) The Governor shall submit at the opening of each regular session of the Legislature a message on the state of the Commonwealth and a budget of estimated receipts and expenditures. This budget shall be the basis of the appropriation bills for the ensuing fiscal year, which shall commence on the first day of January or such other date as the Legislature may determine.¹¹⁰

(d) Every bill passed by the Legislature shall, before it becomes a law, be presented to the Governor. If the Governor approves the bill, the Governor shall sign it. If the Governor disapproves the bill, the Governor shall, except as provided in this Constitution, return it, with objections, to the Legislature within ten days (Sundays excepted) after it shall have been presented by the Legislature. If the Governor does not return the bill within such period, it shall be a law in like manner as if the Governor had signed it, unless the Legislature by adjournment prevents its return, in which case it shall be a law if signed by the Governor within thirty days after it shall have been presented by the Legislature; otherwise, it shall not be a law. When a bill is returned by the Governor to the Legislature with objections, the Legislature shall enter the objections at large on its journal and, upon motion of a member of the Legislature, proceed to reconsider the bill. If, after such reconsideration, two-thirds of all the members of the

108. This Section is based on the Revised Organic Act:

The number of members of the legislature needed to constitute a quorum shall be determined by the laws of the Virgin Islands. No bill shall become a law unless it shall have been passed at a meeting, at which a quorum was present, by the affirmative vote of a majority of the members present and voting, which vote shall be by yeas and nays.

Id. § 1575(a).

109. This Section is based on the Revised Organic Act: “The enacting clause of all acts shall be as follows: ‘Be it enacted by the Legislature of the Virgin Islands.’” *Id.* § 1575(b).

110. This Section is based on the Revised Organic Act:

The Governor shall submit at the opening of each regular session of the legislature a message on the state of the Virgin Islands and a budget of estimated receipts and expenditures, which shall be the basis of the appropriation bills for the ensuing fiscal year, which shall commence on the first day of July or such other date as the Legislature of the Virgin Islands may determine.

Id. § 1575(c).

Legislature pass the bill, it shall be a law. If any bill presented to the Governor contains several items of appropriation of money, the Governor may object to one or more of such items, or any part or parts, portion or portions thereof, while approving the other items, parts, or portions of the bill. In such a case the Governor shall append to the bill, at the time of signing it, a statement of the items, or parts or portions thereof, to which the Governor objects, and the items, or parts or portions thereof, so objected to shall not take effect, unless the Legislature, after reconsideration upon motion of a member thereof, passes such items, parts, or portions so objected to by a vote of two-thirds of all the members of the Legislature.¹¹¹

(e) If at the termination of any fiscal year the Legislature shall have failed to pass appropriation bills providing for payment of the obligations and necessary current expenses of the Commonwealth for the ensuing fiscal year, then the several sums appropriated in the last appropriation bills for the objects and purposes therein specified, so far as the same may be applicable, shall be deemed to be reappropriated item by item.¹¹²

111. This Section is based on the Revised Organic Act:

Every bill passed by the legislature shall, before it becomes a law, be presented to the Governor. If the Governor approves the bill, he shall sign it. If the Governor disapproves the bill, he shall, except as hereinafter provided, return it, with his objections, to the legislature within ten days (Sundays excepted) after it shall have been presented to him. If the Governor does not return the bill within such period, it shall be a law in like manner as if he had signed it, unless the legislature by adjournment prevents its return, in which case it shall be a law if signed by the Governor within thirty days after it shall have been presented to him; otherwise it shall not be a law. When a bill is returned by the Governor to the legislature with his objections, the legislature shall enter his objections at large on its journal and, upon motion of a member of the legislature, proceed to reconsider the bill. If, after such reconsideration, two-thirds of all the members of the legislature pass the bill, it shall be a law. If any bill presented to the Governor contains several items of appropriation of money, he may object to one or more of such items, or any part or parts, portion or portions thereof, while approving the other items, parts, or portions of the bill. In such a case he shall append to the bill, at the time of signing it, a statement of the items, or parts or portions thereof, to which he objects, and the items, or parts or portions thereof, so objected to shall not take effect, unless the legislature, after reconsideration upon motion of a member thereof, passes such items, parts, or portions so objected to by a vote of two-thirds of all the members of the legislature.

Id. § 1575(d).

112. This Section is based on the Revised Organic Act:

If at the termination of any fiscal year the legislature shall have failed to pass appropriation bills providing for payment of the obligations and necessary current expenses of the government of the Virgin Islands for the ensuing fiscal year, then the several sums appropriated in the last appropriation bills for the objects and

(f) The Legislature shall keep a journal of its proceedings and publish the same. Every bill passed by the Legislature and the yeas and nays on any question shall be entered on the journal.¹¹³

Section 14 Elections

General elections shall be held on the first Tuesday after the first Monday in November in every even-numbered year.¹¹⁴

Section 15 Applicability of Laws

All laws in force in the Virgin Islands on the date of adoption of this Constitution shall, to the extent not inconsistent with this Constitution, continue in force and effect as laws of the Commonwealth until otherwise provided by the Legislature.¹¹⁵

ARTICLE IV EXECUTIVE BRANCH

Section 1 Executive Power

The executive power of the Commonwealth shall be vested in an executive officer whose official title shall be the Governor of the Commonwealth of the Virgin Islands of the United States. The Governor, together with the Lieutenant Governor, shall be elected by a majority of the votes cast by the people who are qualified to vote for the members of the Legislature. The Governor and Lieutenant Governor shall be elected every four years at the general election. The Governor and Lieutenant Governor shall be chosen jointly, by the casting by each voter of a single vote applicable to both officers. If no candidates receive a majority of

purposes therein specified, so far as the same may be applicable, shall be deemed to be reappropriated item by item.

Id. § 1575(e).

113. This Section is based on the Revised Organic Act: “The legislature shall keep a journal of its proceedings and publish the same. Every bill passed by the legislature and the yeas and nays on any question shall be entered on the journal.” *Id.* § 1575(f).

114. This Section is substantially identical to the Revised Organic Act: “[T]he general elections shall be held on the first Tuesday after the first Monday in November, beginning with the year 1956, and every two years thereafter.” *Id.* § 1576.

115. This Section is based on the Revised Organic Act and a proposed version of the Virgin Islands Constitution. *See id.* § 1574(c); V.I. CONST. art. XIX, § 3 (proposed May 26, 2009) (returned by Congress to the Virgin Islands for revision, which did not resubmit to the President by the deadline).

the votes cast in any election, a run-off election shall be held fourteen days after the general election between the candidates for Governor and Lieutenant Governor receiving the highest and second highest number of votes cast. The Governor and Lieutenant Governor shall hold office for a term of four years and until their successors are elected and qualified. No person who has been elected Governor for two full successive terms shall be again eligible to hold that office until one full term has intervened. The term of the elected Governor and Lieutenant Governor shall commence on the first Monday of January following the general election.¹¹⁶

Section 2 Qualifications

No person shall be eligible for election to the office of Governor or Lieutenant Governor unless the person is an eligible voter and has been for five consecutive years immediately preceding the election a citizen of the United States and a bona fide resident of the Commonwealth and will be, at the time of taking office, at least thirty years of age. The Governor shall maintain an official residence in the Government House on Saint Thomas during the Governor's incumbency. While on Saint Croix the Governor may reside in the Government House on Saint Croix.¹¹⁷

Section 3 Duties of the Governor

(a) The Governor shall have general supervision and control of all the departments, bureaus, agencies, and other instrumentalities of the executive branch of the Commonwealth. The Governor may grant pardons and reprieves and remit fines and forfeitures for offenses against the laws of the Commonwealth. The Governor may veto any legislation as provided in this Constitution. The Governor shall appoint, and may remove, all officers and employees of the executive branch of the Commonwealth, except as otherwise provided under the laws of the Commonwealth, and shall commission all officers that the Governor may be authorized to appoint. The Governor shall be responsible for the faithful execution of the laws of the

116. This Section is based on the Revised Organic Act. 48 U.S.C. § 1591.

117. This Section is based on the Revised Organic Act. *Id.*

Commonwealth. Whenever it becomes necessary, in case of disaster, invasion, insurrection, or rebellion or imminent danger thereof, or to prevent or suppress lawless violence, the Governor may summon the posse comitatus or call out the militia or request assistance of the Armed Forces of the United States. The Governor may, in case of rebellion or invasion or imminent danger thereof, or when the public safety requires it as a result of natural disaster or imminent danger thereof, proclaim the Commonwealth to be under martial law. The members of the Legislature shall meet forthwith on their own initiative and may, by a two-thirds vote, revoke such proclamation.¹¹⁸

(b) The Governor shall have the power to issue executive orders and regulations not in conflict with any applicable law. The Governor may recommend bills to the Legislature and give expression of the Governor's views on any matter before that body.¹¹⁹

Section 4 Lieutenant Governor

There is hereby established the office of Lieutenant Governor of the Commonwealth of the Virgin Islands of the United States. The Lieutenant Governor shall have such executive powers and perform such duties as may be assigned by the Governor or prescribed under the laws of the Commonwealth.¹²⁰

Section 5 Temporary Disability or Temporary Absence of Governor

In case of the temporary disability or temporary absence of the Governor, the Lieutenant Governor shall have the powers of the Governor.¹²¹

118. This Section is based on the Revised Organic Act. *Id.*

119. This Section is based on the Revised Organic Act. *Id.*

120. This Section is based on the Revised Organic Act. *Id.*

121. This Section is based on the Revised Organic Act: "In case of the temporary disability or temporary absence of the Governor, the Lieutenant Governor shall have the powers of the Governor." *Id.* § 1595(a).

Section 6 Permanent Vacancy in Office of Governor

In case of a permanent vacancy in the office of Governor, arising by reason of the death, resignation, removal by recall or permanent disability of the Governor, or the death, resignation, or permanent disability of a Governor-elect, or for any other reason, the Lieutenant Governor or Lieutenant Governor-elect shall become the Governor, to hold office for the unexpired term and until a successor shall have been duly elected and qualified at the next regular election for Governor.¹²²

Section 7 Temporary Absence of Lieutenant Governor

In case of the temporary disability or temporary absence of the Lieutenant Governor, or during any period when the Lieutenant Governor is acting as Governor, the powers of the Lieutenant Governor shall be exercised by such person as the laws of the Commonwealth may prescribe.¹²³

Section 8 Permanent Vacancy in Office of Lieutenant Governor

In case of a permanent vacancy in the office of Lieutenant Governor, arising by reason of the death, resignation, or permanent disability of the Lieutenant Governor, or because the Lieutenant Governor or Lieutenant Governor-elect has succeeded to the office of Governor, the Governor shall appoint a new Lieutenant Governor, with the advice and consent of the Legislature, to hold office for the unexpired term and until a

122. This Section is based on the Revised Organic Act:

In case of a permanent vacancy in the office of Governor, arising by reason of the death, resignation, removal by recall or permanent disability of the Governor, or the death, resignation, or permanent disability of a Governor-elect, or for any other reason, the Lieutenant Governor or Lieutenant Governor-elect shall become the Governor, to hold office for the unexpired term and until he or his successor shall have been duly elected and qualified at the next regular election for Governor.

Id. § 1595(b).

123. This Section is based on the Revised Organic Act: "In case of the temporary disability or temporary absence of the Lieutenant Governor, or during any period when the Lieutenant Governor is acting as Governor, the president of the legislature shall act as Lieutenant Governor." *Id.* § 1595(c). This proposal would modify this provision of the Revised Organic Act to allow the Legislature to direct the order of succession in the event of an absence of the incumbent executive officers.

successor shall have been duly elected and qualified at the next regular election for Lieutenant Governor.¹²⁴

Section 9 Temporary Absence of Governor and Lieutenant Governor

In case of the temporary disability or temporary absence of both the Governor and the Lieutenant Governor, the powers of the Governor shall be exercised, as Acting Governor, by such person as the laws of the Commonwealth may prescribe. In case of a permanent vacancy in the offices of both the Governor and Lieutenant Governor, the office of Governor shall be filled for the unexpired term in the manner prescribed by the laws of the Commonwealth.¹²⁵

Section 10 Appointment of Department Heads

The heads of the executive departments created by the laws of the Commonwealth shall be appointed by the Governor, with the advice and consent of the Legislature. Each shall hold office during the continuance in office of the appointing Governor and until a successor is appointed and qualified, unless sooner removed by the Governor. Each shall have such powers and duties as may be prescribed by the Legislature. The chair and members of any board, authority, or commission established by the laws of the Commonwealth shall, if the laws of the Commonwealth hereafter provide, also be appointed by the Governor with the advice and

124. This Section is based on the Revised Organic Act:

In case of a permanent vacancy in the office of Lieutenant Governor, arising by reason of the death, resignation, or permanent disability of the Lieutenant Governor, or because the Lieutenant Governor or Lieutenant Governor-elect has succeeded to the office of Governor, the Governor shall appoint a new Lieutenant Governor, with the advice and consent of the legislature, to hold office for the unexpired term and until he or his successor shall have been duly elected and qualified at the next regular election for Lieutenant Governor.

Id. § 1595(d).

125. This Section is based on the Revised Organic Act:

In case of the temporary disability or temporary absence of both the Governor and the Lieutenant Governor, the powers of the Governor shall be exercised, as Acting Governor, by such person as the laws of the Virgin Islands may prescribe. In case of a permanent vacancy in the offices of both the Governor and Lieutenant Governor, the office of Governor shall be filled for the unexpired term in the manner prescribed by the laws of the Virgin Islands.

Id. § 1595(e).

consent of the Legislature, if such board, authority, or commission has quasi-judicial functions.¹²⁶

ARTICLE V JUDICIAL BRANCH¹²⁷

Section 1 Judicial Power of the Commonwealth

The judicial power of the Commonwealth is vested exclusively in a unified judicial system consisting of a Supreme Court, an intermediate appellate court known as the Court of Appeals, and a trial court of general jurisdiction known as the Superior Court.

Section 2 Supreme Court

The Supreme Court consists of no fewer than three justices, including a Chief Justice. It may exercise appellate jurisdiction in accordance with the rules of procedure in any case brought in the judicial system.

(a) The Supreme Court has initial appellate jurisdiction of all judgments and reviewable orders, except to the extent such

126. This Section is based on the Revised Organic Act:

The heads of the executive departments created by this chapter shall be appointed by the Governor, with the advice and consent of the legislature. Each shall hold office during the continuance in office of the Governor by whom he is appointed and until his successor is appointed and qualified, unless sooner removed by the Governor. Each shall have such powers and duties as may be prescribed by the legislature. The chairman and members of any board, authority, or commission established by the laws of the Virgin Islands shall, if the laws of the Virgin Islands hereafter provide, also be appointed by the Governor with the advice and consent of the legislature, if such board, authority, or commission has quasi-judicial functions: *Provided*, That no law of the Virgin Islands dealing with the chairmanship, membership, or chairmanship and membership of any such board, authority, or commission, and requiring an appointment or appointments to be made with the advice and consent of the legislature, shall relate to more than one such board, authority, or commission, nor shall it relate to any other legislative matter.

Id. § 1597(c).

127. The Act of Congress authorizing the creation of a Virgin Islands Constitution requires “[s]uch constitution[s] . . . [to] provide for a system of local courts consistent with the provisions of the Revised Organic Act of the Virgin Islands.” An Act to Provide for the Establishment of Constitutions for the Virgin Islands and Guam of October 21, 1976, Pub. L. No. 94-584, § 2(b)(6), 90 Stat. 2899, 2899 (prior to amendments in 1980 and 2010). The Revised Organic Act does not currently have a Section comprehensively dealing with the judicial branch. For this reason, unless otherwise noted, the *Model Judicial Article* is used as a model. *See generally* ABA COMM. ON STANDARDS OF JUD. ADMIN., MODEL JUDICIAL ARTICLE (1995). The provisions of the *Model Judicial Article* are in large part similar to, and consistent with, the current organization of the judicial branch under the Revised Organic Act and Title 4 of the Virgin Islands Code. *Compare generally id.*, with Revised Organic Act, 48 U.S.C. §§ 1611–17, and V.I. CODE ANN. tit. 4 (2022).

jurisdiction is vested by rules of procedure in another court. It has authority to issue process in the nature of mandamus, prohibition, habeas corpus, and injunction to give effect to its jurisdiction and exercise its supervisory authority over the judicial system. It has ultimate disciplinary authority over members of the judiciary and persons admitted to practice law in the courts of the Commonwealth.

(b) The Supreme Court shall have exclusive jurisdiction to regulate the admission of persons to the practice of law in the courts of the Commonwealth and the discipline of persons so admitted.¹²⁸

(c) The Chief Justice is selected by the justices of the Supreme Court from among their number and presides over the Supreme Court. The Chief Justice holds office for a term of a minimum of five years, if remaining in office as a justice, and is eligible for re-selection. The Chief Justice is the administrative head of the judicial system.

Section 3 Court of Appeals

The Legislature may create an intermediate court of appeals to exercise initial appellate jurisdiction of all judgments and reviewable orders subject to further review by the Supreme Court in its discretion. Upon creation, such Court of Appeals must consist of at least three judges and, except as may be otherwise provided in the rules of procedure, sits in panels of more than one judge. Subject to the foregoing provisions, the number of judges of the Court of Appeals may be increased or decreased by law from time to time. A decrease in the number of incumbents shall be effective only upon the death, resignation, or retirement of an incumbent.

(a) The Court of Appeals has appellate jurisdiction as prescribed by the rules of procedure. Subject to the authority of the Supreme Court, it may issue process in the nature of mandamus, prohibition, habeas corpus, and injunction to give effect to its jurisdiction and its supervisory authority over courts of subordinate jurisdiction.

128. This Section is based on the Virgin Islands Code: "The Supreme Court has exclusive jurisdiction to regulate the admission of persons to the practice of law and the discipline of persons admitted to the practice of law." tit. 4, § 32(e).

(b) Geographic divisions of the Court of Appeals may be established by rules of administration or by law. Each division shall have a chief judge who is appointed by the Chief Justice for a term of three years and is eligible for reappointment.

Section 4 Superior Court

The Superior Court is the trial court of general jurisdiction and has original jurisdiction in all cases. Each division of the Superior Court shall have a Presiding Judge selected as may be specified in the rules of administration.

(a) The Superior Court shall be divided into divisions established by rules of administration.

(b) The number of judges of the Superior Court may be increased or decreased by law from time to time. A decrease in the number of judges shall be effective only upon the death, resignation, or retirement of an incumbent.

Section 5 Selection of Judges

Judges, including justices of the Supreme Court, shall be citizens of the United States, residents of the Commonwealth, and admitted to practice law in the courts of the Commonwealth.

(a) A vacancy in a judicial office is filled by appointment of the Governor from a list of at least three nominees certified by the judicial nominating commission having authority for the court in which the vacancy occurs. The commission shall submit the list of nominees within thirty days after the vacancy occurs; it may submit a list of fewer than three persons, if it certifies that there are not three persons with the requisite qualifications. If the Governor fails to make an appointment from the list within thirty days after it is submitted, the Chief Justice shall make the appointment from the same list.

(b) A judge so appointed holds office during good behavior until the next general election two years thereafter when the judge's name should be submitted, without opposing candidates, for retention or rejection by the electorate in the division served by the court to which appointed, and, if retained, should serve an initial and subsequent terms during good behavior until retirement, subject to retention by the electorate at the end of each term in the same manner as the initial retention.

(c) The appellate court nominating commission nominates persons for appointment to the Supreme Court and Court of Appeals. It consists of eight members, one of whom is the Chief Justice, or a justice of the Supreme Court designated by the Chief Justice, who is the commission's presiding officer but who does not have a vote. Four members shall be citizens of the Commonwealth not admitted to the practice of law in the courts of the Commonwealth who shall be appointed by the Governor for staggered terms of four years each, the terms being arranged by the Governor in the initial appointments so that one expires each year. Three members shall be lawyers admitted to the practice of law in the courts of the Commonwealth who shall be appointed by the Virgin Islands Bar Association for terms of three years, the terms to be arranged in the initial appointments so that not more than one expires each year.

(d) In each division there is a trial court nominating commission having authority to nominate persons for appointment to the Superior Court. Each such commission consists of eight members who shall be selected in the same way as the appellate court nominating commission, except that its members other than the presiding officer shall be residents of the division. The presiding officer shall not have a vote.

Section 6 Judicial Misconduct and Incapacity

(a) The Judicial Discipline and Incapacity Commission has authority to investigate and make recommendations concerning alleged misconduct or incapacity of a justice or judge.

(1) The Commission consists of twelve members. Four members shall be intermediate appellate judges or trial judges and appointed by the Supreme Court for terms of four years each. Initial appointments shall be so arranged that one term expires each year.

(2) Four members shall be lawyers admitted to practice law in the courts of the Commonwealth who shall be appointed by the Virgin Islands Bar Association for terms of four years each. The initial terms shall be so arranged that one term expires each year.

(3) Four members shall be citizens of the Commonwealth not admitted to the practice of law in the courts of the Commonwealth who shall be appointed by the Governor for

terms of four years each. The initial appointments shall be so arranged that one expires each year.

(b) The Commission shall receive and investigate all complaints concerning judicial misconduct and incapacity. After an investigation, the Commission may order a hearing concerning the matter and thereupon, if a hearing panel of the commission finds good cause therefor, recommend to the Supreme Court that the justice or judge in question be removed, retired, suspended from office, censured, or transferred to incapacity inactive status. The recommendations of the commission or a panel, together with the record of the proceedings and a statement of its findings and conclusions, shall be transmitted to the Supreme Court, which shall render such judgment as it deems appropriate, including transfer to judicial incapacity retirement status, and removal, retirement, suspension, or censure for misconduct. The Supreme Court may, when appropriate, suspend a judge pending disposition of misconduct or incapacity proceedings. An interim suspension or a hearing concerning a justice of the Supreme Court shall be held before a special Supreme Court composed of judges who are not regular members of the Supreme Court.

(c) The Supreme Court shall adopt rules to implement this section, including rules governing confidentiality, discipline, incapacity, interim suspension, and a special Supreme Court.

Section 7 Judicial Administration

(a) The Chief Justice is the administrative head of the court system. The Chief Justice carries out the administrative policies promulgated by rules and regulations of the Supreme Court, including powers of general administration. These powers include:

- (1) Assignment of judicial and nonjudicial personnel;
- (2) Appointment of the administrative director of the courts, who serves at the pleasure of the Chief Justice in supervising administrative operations;
- (3) General supervision of the court system's financial affairs and submission of an annual budget to the Legislature, which shall provide appropriations sufficient to operate the system and provide adequate facilities;
- (4) Presentation of an annual report to the Governor and the Legislature;

(5) General supervision of the court system's program of continuing education for judicial and nonjudicial personnel and planning and operations research, program development, and evaluation;

(6) General supervision of the work of the administrative staff of the court system;

(7) Acting as the chief representative of the court system with other branches of government, persons admitted to practice law in the courts of the Commonwealth, and the public;

(8) Presiding over conferences in which all judges, judicial officers, and court administrators in the court system participate in deliberation and discussion concerning the administration of the courts, including review, comment, and recommendations upon proposed administrative rules and regulations and administrative policies.

(b) Administrative rules and regulations promulgated by the Supreme Court should also include:

(1) Selection of a Chief Judge for the Court of Appeals or divisions thereof and for each division of the Superior Court;

(2) Procedures for selection and retention on a merit basis of all nonjudicial personnel employed in the judicial system;

(3) Appointment and retention of judicial officers on a merit basis;

(4) Standards of judicial conduct.

(c) Judicial officers shall be persons admitted to practice law in the courts of the Commonwealth. They have authority to assist in judicial functions in the court system by performing such tasks as adjudicating small claims, ex parte and preliminary matters, and acting as referee, as prescribed by the rules of administration.

Section 8 Rules of Procedure

The Supreme Court shall adopt rules of procedure for all courts in all proceedings, criminal and civil, including rules of appellate jurisdiction and rules of trial court jurisdiction not inconsistent with this Constitution.

Section 9 Judicial Compensation and Service

(a) Justices and judges shall receive compensation as provided by law, but the compensation of a justice or judge shall not be decreased during the term of office. Compensation levels shall be reviewed on a periodic basis by a judicial compensation commission and adjusted to ensure that judicial compensation is not diminished by increases in the cost of living.

(b) During judicial tenure, a justice or judge shall not be a candidate for any elective public office other than a judicial office or hold public office other than in the judicial system or related to the improvement of the law, the legal system, or the administration of justice. Neither shall a justice or judge hold an office in a political organization, contribute to or campaign for a political party or candidate for elective public office, or engage in the practice of law or the pursuit of business, except as permitted by the Code of Judicial Conduct.

(c) A judge shall be provided with adequate retirement benefits which shall be reviewed on a periodic basis and adjusted to ensure that retirement benefits are not diminished by increases in the cost of living. After retirement, with a judge's consent, that judge may be recalled to temporary service in accordance with the rules of administration.

ARTICLE VI INITIATIVES AND RECALLS¹²⁹

Section 1 Grant of Rights

The people of the Commonwealth shall have the rights of initiative and recall to be exercised as provided in this Article.

Section 2 Initiatives

(a) An initiative may enact, amend, or repeal any law, except that an initiative shall not be used to repeal a law declared by the Legislature at the time of passage to be an emergency law necessary for the preservation of the public health, safety, or peace.

¹²⁹. This Article is based in its entirety on the Revised Organic Act. 48 U.S.C. § 1593(a)-(c).

(b) An initiative that proposes a reduction of taxes shall also provide for an equivalent reduction of expenditures or an equivalent increase in revenues from other sources.

(c) An initiative shall address one subject only and matters reasonably related to that subject.

(d) The ballot question shall be in such form that a “yes” vote is a vote in favor of the proposal and a “no” vote is a vote against the proposal.

(e) A copy of the proposed initiative petition, including a complete text of the proposed law and containing signatures equal to at least one percent of the voters of each legislative district or four percent of all voters of the Commonwealth must be submitted to the Supervisor of Elections prior to circulation for ballot qualification. The Supervisor of Elections must determine within ten days after the submission whether the preliminary signatures are sufficient. If so determined, the Supervisor of Elections shall refer the preliminary petition to an initiative titling board consisting of the Attorney General, the Supervisor of Elections, and the legislative counsel of the Legislature. The board shall, in an open hearing, prepare the official ballot title, the submission question, and a summary of the initiative proposal, and this preparation shall be completed within thirty days after the referral.

(f) After the ballot title has been written, proponents of the initiative proposal shall have a maximum of 180 days to circulate the petition. Petitions containing signatures equal to at least ten percent of the voters of each legislative district or forty-one percent of all voters of the Commonwealth must be submitted to the Supervisor of Elections. The Supervisor shall have fifteen days to determine that the minimum number of valid signatures are contained in the petition, and he shall forward the certified proposal to the Legislature which must accept or reject the measure within thirty days. If approved, the initiative shall take effect in accordance with its terms. If the Legislature does not approve, the initiative shall be submitted to the voters at the next general election, unless the Legislature approves a special election for this purpose. The Legislature may submit its own version of the initiative to the voters. Should both measures be approved by the voters, the measure receiving the higher number of votes shall prevail. The voters shall have a clear alternative of rejecting either version or the entire proposition.

(g) An initiative submitted to the voters shall take effect if the initiative is approved by a majority of persons voting and if a majority of the voters of the Commonwealth vote on the initiative. An initiative may not be vetoed by the Governor, and when approved by the voters, may not be amended or repealed by the Legislature during the three-year period after its approval unless the Legislature acts by a two-thirds majority.

(h) The Legislature may provide the manner in which petitions shall be circulated, filed, certified, and the ballot question shall be submitted to the voters.

Section 3 Recalls

(a) An elected public official of the Commonwealth may be removed from office by a recall election carried out as prescribed hereunder. The grounds for recall are any of the following: lack of fitness, incompetence, neglect of duty, or corruption.

(b) A recall election may be initiated by a two-thirds vote of the members of the Legislature or by a petition identified herein.

(c) Prior to circulation, a recall petition which identifies by name and office the official being recalled and which states the grounds for recall shall be submitted to the Supervisor of Elections. The sponsors of the recall petition shall be allowed a period of sixty days after such submission for filing with the Supervisor of Elections a list of signatures of voters of the Commonwealth equal in number to at least fifty percent of the whole number of votes cast for that office in the last general election at which that office was filled. The Supervisor of Elections shall have fifteen days in which to determine whether the minimum number of valid signatures is contained in the recall petition.

(d) A special recall election shall be held with respect to an elected public official not earlier than thirty days after a vote of the Legislature or a determination of the Supervisor of Elections, as the case may be, and not later than sixty days after such vote or determination.

(e) An official shall be removed from office upon approval of the recall in an election in which at least two-thirds of the number of persons voting for such official in the last preceding general election at which such official was elected vote in favor of recall and in which those so voting constitute a majority of all those participating in such recall election.

(f) No recall election shall be held with respect to an elected public official during the first year of the first term of office of the official, or less than three months before a general election for the office.

ARTICLE VII CONSTITUTIONAL AMENDMENT¹³⁰

Section 1 Proposal of Amendments

Amendments to this Constitution shall maintain the principles of a republican form of government and may be proposed by initiative, a constitutional convention, or the Legislature.

Section 2 General Constitutional Convention

(a) The Legislature, by the affirmative vote of two-thirds of its members, may submit to the electors of the Commonwealth at a general election the question, “Shall there be a constitutional convention to propose amendments to the Constitution of the Commonwealth of the Virgin Islands of the United States?”

(b) An initiative petition may submit to the electors of the Commonwealth the question, “Shall there be a constitutional convention to propose amendments to the Constitution of the Commonwealth of the Virgin Islands of the United States?” The petition shall be signed by at least fifteen percent of the electors of each legislative district of the Commonwealth or by twenty-five percent of the qualified electors of the Commonwealth. The question shall be submitted to the electors at the first regular election held not less than ninety days after filing of the initiative petition.

(c) If a majority of those voting on the question of a constitutional convention favors holding such a convention, the Legislature shall convene a convention within 120 days after approval of the petition.

(d) Delegates to a constitutional convention shall be elected on a nonpartisan ballot as provided by law. A constitutional

130. This Article is based on a proposed Virgin Islands Constitution. V.I. CONST. art. XVIII (proposed May 26, 2009) (returned by Congress to the Virgin Islands for revision, which did not resubmit to the President by the deadline).

convention may propose an amendment to the Constitution only upon the affirmative vote of two-thirds of its members.

Section 3 Legislative Proposal

The Legislature may propose an amendment to this Constitution upon the affirmative vote of two-thirds of its members.

Section 4 Initiative

The people may propose an amendment to this Constitution by initiative. An initiative petition shall contain the full text of the proposed amendment and shall be signed by fifteen percent of the electors of each legislative district of the Commonwealth or by twenty-five percent of the electors of the Commonwealth.

Section 5 Limited Constitutional Conventions

A constitutional amendment proposed by the Legislature or by initiative may provide, in accordance with its terms, for direct ratification by the electors of the Commonwealth or for the convening of a constitutional convention limited to the issues raised by the proposed amendment. If a majority of those voting on the question of a limited constitutional convention favors holding such convention, the Legislature shall convene a limited constitutional convention within 120 days, subject to the same restrictions on membership and adoption of any proposed amendment as those imposed on a general constitutional convention.

Section 6 Ratification of Amendments

Each proposed amendment to this Constitution shall be submitted to the electors of the Commonwealth for ratification at a general election or at a special election called by the Legislature. A proposed amendment shall take effect in accordance with its terms upon the affirmative vote of a majority of those voting on the amendment.

ARTICLE VIII TRANSITION¹³¹**Section 1 Ratification and Effective Date of Constitution**

This Constitution, as finally approved or modified by the Congress of the United States, shall be submitted to the electors of the Virgin Islands on November 3, 2026, and shall be ratified upon the affirmative vote of a majority of those voting on the question. The Constitution shall take effect on March 31, 2027.

Section 2 Elections

Except as otherwise set forth within any other provision of this Constitution, all elected officials shall be elected in accordance with this Constitution at the first general election after the effective date of this Constitution, provided that the Governor and Lieutenant Governor shall complete the term of office for which they were elected.

Section 3 Continuity of Laws

Laws, executive orders, and regulations in force in the Virgin Islands on the effective date of this Constitution that are consistent with this Constitution shall continue in force as laws of the Commonwealth until they expire, are amended, or repealed. Laws, executive orders, and regulations that have been enacted or issued that are inconsistent with this Constitution shall be void to the extent of such inconsistency.

Section 4 Continuity of Government Employment and Operations

Employees of the Government of the Virgin Islands on the effective date of this Constitution shall be employees of the Commonwealth on the same terms and conditions of employment as were in effect and enforceable previously, unless otherwise provided by law. Employees of the Government of the Virgin

131. This Article is substantively identical to a proposed version of a Virgin Islands Constitution. *Id.* art. XIX (proposed May 26, 2009) (returned by Congress to the Virgin Islands for revision, which did not resubmit to the President by the deadline).

Islands shall have the same functions and duties after becoming employees of the Commonwealth unless otherwise provided by law.

Section 5 Continuity of Legislative Matters

The Legislature established by the laws of the Virgin Islands shall continue operations as the Legislature of the Commonwealth in the same manner as prior to the date of adoption of this Constitution until and unless changed by law. The members of the Legislature in office at the time of the adoption of this Constitution shall complete the term of office for which they were elected. All rules governing the procedures of the Legislature consistent with this Constitution and in effect upon the adoption of this Constitution shall continue unless and until changed by the Legislature.

Section 6 Continuity of Judicial Matters

The Supreme Court and all lower courts established by the laws of the Virgin Islands shall continue operations as courts of the Commonwealth in the same manner as prior to the date of adoption of this Constitution until and unless changed by law. The justices of the Supreme Court in office at the time of the adoption of this Constitution shall complete the term of office for which they were appointed. The qualifications for justices set forth in this Constitution shall not be retroactively applied to any sitting justice. All rules of the judicial branch consistent with this Constitution and in effect upon the adoption of this Constitution shall continue until and unless changed by the Supreme Court.

Section 7 Prospective Operation of Rights

All rights or obligations, procedural or substantive, created by this Constitution shall be prospective from the effective date of this Constitution.

Section 8 Succession

The Commonwealth shall succeed to all rights and obligations of the Government of the Virgin Islands that existed prior to the

effective date of this Constitution. The validity of all public and private bonds, debts, and contracts, and of all claims, actions, and causes of action shall continue as if no change had taken place.