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Published on *St. Croix Source* (<http://stcroixsource.com>)

Judge Orders that V.I. Constitution Be Sent to Obama

The V.I. Superior Court has ordered Gov. John deJongh Jr. to forward the proposed constitution submitted by the Fifth Constitutional Convention to President Barack Obama within 10 business days of Dec. 23.

The convention submitted a draft document to Gov. John deJongh Jr. on June 1. According to the procedure set up in federal and local law, the governor is supposed to forward the document, which should meet criteria such as being compatible with the U.S. Constitution, on to President Barack Obama within 10 days of receiving it.

Obama has 60 days to add his comments and forward it to the U.S. Congress, which also has 60 days to look it over. Delegate Donna Christensen and others may testify, and Congress has the power to add or delete by amendment. If passed, the constitution will go to President Barack Obama for signing, like any U.S. law. Then it comes back to the territory to be voted up or down in a referendum.

Upon receiving the document on June 11, deJongh announced at a press conference he would not be forwarding the proposed constitution. Because the document failed to explicitly recognize the U.S. Constitution as the "supreme law of the land," and gave ancestral native and native Virgin Islanders certain rights and benefits not available to all other residents, it did not meet the requirements set up by federal law, he said. Since the law said the document that is submitted "shall" meet those requirements, Attorney General Vincent Frazer advised deJongh he was not obligated to forward the document.

"If the role of the governor were simply to forward whatever he was sent... then this would have been a meaningless requirement," deJongh argued.

Constitutional Convention delegates Gerard Luz James II and Mary Moorhead quickly filed a complaint in District Court, stating that deJongh violated both local and federal law when he "refused" to forward the draft on to the president. The federal law authorizing the territories to establish constitutional conventions says "only the president can comment on the contents of the proposed constitution of the Virgin Islands," according to the complaint.

The government filed a motion to dismiss the suit at the end of July, arguing that James and Moorhead, acting in their official capacities as the convention's president and secretary, could not sue or be sued. The convention's powers are limited to those laid out in its enabling statute, and further there's no indication that any of the other convention delegates gave James and Moorhead permission to file suit on their behalf, the government's motion said.

In October, V.I. Superior Court Judge Darryl D. Donohue Sr. issued a ruling in which he agreed with the government's argument, but said James and Moorhead did have standing to sue as private citizens, which they then did.

On Dec. 23, Donohue ruled in favor of James and Moorhead. In his ruling, Donohue said the law does not specify any role for the governor other than forwarding the document. Donohue argued the language would have outlined a specific role beyond submitting the document if one was intended. He said the statute specifically authorized Congress to make modifications or amendments, while the president is given authority to add comments, but the governor is directed to simply forward it. Donohue also issued a writ of mandamus directing deJongh to forward the document to the U.S. President within 10 business days

Calls and emails made Christmas day and Dec. 26 requesting comment from Moorhead and from the V.I. government were not returned as of press time Dec. 26.

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