

**OPENING STATEMENT**  
**HON. MADELEINE Z. BORDALLO**  
**USVI Constitution Hearing - March 17, 2010**

The Subcommittee is meeting today to hear testimony on the proposed constitution of the United States Virgin Islands submitted by the 5<sup>th</sup> Virgin Islands Constitutional Commission.

The United States Virgin Islands, like the Congressional District I have the privilege to represent here in Congress – Guam – are the only two U.S. jurisdictions that are not governed by a Constitution written by the people. Both areas are governed by an Organic Act that was written by Congress.

To more firmly enable both jurisdictions to write their own Constitutions, Congress, in 1976, enacted legislation sponsored by former Virgin Islands Delegate, Congressman Ron de Lugo, and one of my predecessors, the late Congressman Antonio B. Won Pat, to authorize the people of the Virgin Islands and Guam to convene constitutional conventions and write their own local constitutions. The law, U.S. Public Law 94-528, sets out a process for federal review of any proposed constitution, including 60 day periods for both Presidential and Congressional review, respectively.

The Virgin Islands has on four previous occasions, written constitutions, two pursuant to local law and two in accordance with U.S. Public Law 94-528. The first attempt, in 1964 was not approved in its entirety by Congress and the second in 1971 was never submitted to Congress because of the low level of voter support when it was submitted to the people of the territory for their approval. The third draft constitution was submitted to Congress in 1978 but was rejected by the voters when it was returned to them without having been amended. A fourth proposed constitution was drafted in 1980. Congress approved that document via a joint resolution in 1981 but it too was rejected by the voters: which brings us to the current document before us today.

The law that authorized the writing of a Constitution by the Virgin Islands and Guam empowers Congress with the ability to amend or clarify the said constitutions should we see fit. Congress could also allow a proposed constitution to be returned to the residents of either territory for approval by the voters without changing the document in any way as was done by the 96<sup>th</sup> Congress with the third proposed Virgin Islands constitution.

In submitting the fifth proposed constitution to Congress, President Obama included for our consideration a legal memorandum from the United States Department of Justice which outlines at least eight areas in the proposed constitution that the Department believes should either be removed from the constitution or modified. We suspect the witness for the Department of Justice will elaborate on this further.

The principal question confronting this Committee and Congress is whether or not we will be able to modify or amend the draft constitution to conform to the recommendations of the Justice Department. In examining this question we are mindful that the law authorizing this process for drafting and adoption of such Constitution requires Congress to act within 60 days. Regrettably, this window of time does not reflect the current realities as to the pace at which legislation of this nature would typically advance through Congress, particularly with respect to recent experiences associated with bills pending in the other body.

Another consideration we are called to take into account is the impact any Congressional modification would have on the view of the voters in the Virgin Islands whose Constitution this is, and who will ultimately be called upon to approve or disapprove of

it via referendum. In considering these circumstances, I am mindful of the words shared by the former Chairman of the Senate Energy and Natural Resources Committee, the Honorable J. Bennett Johnston of Louisiana, who, when speaking at the hearing to approve the fourth proposed Virgin Islands constitution, said rather simply and straightforwardly – quote – *“This constitution should be the product of the people of the Virgin Islands and I believe that we should defer to them.”* End quote.

His words are as relevant today with respect to the fifth constitution before us as they were with respect to the fourth constitution before Congress in 1981; both have risen under the same process. We must, therefore, take care not to substitute our judgment for those of the people who were elected to draft the constitution on behalf of the people who elected them, lest the principle of self-government be trampled upon.

As we hear from our witnesses today, including a number of whom helped draft the constitution, it is my hope that a consensus will emerge as to the best way forward given the time constraints we are under and the limitations in getting legislation duly acted upon without delay by the other body.

I know that the people of the Virgin Islands want to have their own constitution as evidenced by the decades worth of attempts they have made to secure one. While this constitution may not be a perfect document, and this committee will go on record acknowledging its legal imperfections, it nonetheless is a product of a significant amount of hard work and as such deserves our most serious, careful attention as well as that of the people of the Virgin Islands who will ultimately be called upon to approve or disapprove it irrespective of whether Congress takes any action on it or not.

Finally, I want to thank the Governor and other leaders who have submitted testimony for our consideration. I also want to extend my sincerest welcome to those that have traveled from the Virgin Islands to be with us today. I also want to acknowledge the steadfast leadership provided by your Member of Congress, our good friend, the distinguished gentlewoman, Dr. Donna Christensen. She is an ardent guardian of self-government and seeks at every opportunity to protect and advance the fundamental, political rights of the people of the territories. This Committee will continue to value her leadership on these issues, and I know will deliberate on this particular matter with appropriate deference to her insight. With that, I look forward to the testimonies.