



## Full Story

### **Delegates blast governor, vow lawsuit**

By MEGAN POINSKI

Friday, June 12th 2009

Although Constitutional Convention President Gerard Luz James II has quite a lot to say about Gov. John deJongh Jr.'s decision to halt the progress of the draft constitution, he plans to let a lawsuit do most of the talking for him.

James, who is out of the territory on business this week, said that other officers of the Constitutional Convention will be filing a lawsuit against deJongh in Superior Court today. The planned lawsuit will ask a judge to force deJongh to send the proposed constitution to President Barack Obama - allowing the document to continue on the path toward a ratification vote by Virgin Islands voters.

DeJongh announced Thursday that he is not forwarding the constitution because he does not believe it conforms to federal law and does not establish the supremacy of the United States and the U.S. Constitution. James said he does not buy that argument.

"He's just a conduit to send the document to the president," James said. "It's not open for his opinion. His opinion can come out when the document comes back to the people for a vote. But with this decision, the governor played judge and jury at the midnight hour with the people's business."

James said he can understand that the governor would have his own opinion about the document, but argued that he should work with the document drafted by the Constitutional Convention. All of the delegates to the convention were elected by the territory's voters to do the people's work - just the same as the governor, James said.

James pointed out that deJongh is the first territorial governor to stop the process of considering a proposed constitution.

Lloyd Jordan, a Washington, D.C.-based attorney who served as legal counsel to the convention, also questioned whether deJongh acted within the purview of the law. Throughout the entire convention, Jordan warned delegates countless times that they should not include provisions guaranteeing exclusive rights to native Virgin Islanders. These portions of the document - which were among the top reasons deJongh gave for rejecting the constitution - violate the equal rights protections enshrined in the U.S.

Constitution, Jordan said.

"Whether the constitution was sound legally or not, I don't think he had the discretion to take that action," Jordan said.

If Congress had wanted to give the governor the opportunity to reject or alter a proposed constitution, Jordan said that specific language would have been included in the document.

Paul Leary, a political science professor emeritus at the University of the Virgin Islands, said that the constitutionality issue is a "complicated legal mess." He also was not sure that deJongh had the authority to put the document aside.

Throughout the duration of the Fifth Constitutional Convention, debate was fiercely polarized. A large contingent of delegates supported special rights for native Virgin Islanders, but another group of delegates refused to accept distinct privileges granted to a group of people based on their ancestry.

Delegate Eugene Petersen was one of the delegates who stood against the document. Earlier this year, Petersen composed his own draft constitution that did not include the controversial sections in hopes that everyone could agree on it. The body never formally considered Petersen's draft.

Petersen said he was saddened by the appearance that the Fifth Constitutional Convention could not produce a viable constitution. But he said he felt vindicated by the fact that deJongh found that many of the controversial sections Petersen wanted to delete were reason enough to reject the entire document.

Petersen said he also is glad that the document did not get to Congress in its current form. Aside from the unconstitutional portions, Petersen said the document has several careless drafting errors.

"It would be embarrassing for that document to be presented at the top level of the U.S. government," Petersen said. "The world's most powerful nation, and we have simple mistakes in it."

Delegate Violet Anne Golden, who also voted against the document, said that deJongh's choice to reject the constitution gave her "one of those moments where you take a deep breath and say, 'Thank God.'" Golden said that the governor's concern for equality in the territory and respect for the United States prevented a potential disaster.

"It took great courage, leadership and respect for someone like the governor to stop the train," Golden said. "And what a wreck it would have been."

But not all of the delegates who generally stood in opposition to the document felt that it

should have been stopped.

Delegate Charles Turnbull, a former two-term governor who also has served on all five Virgin Islands Constitutional Conventions, often opposed the controversial portions in the draft. He ultimately voted to approve the draft to ensure that something got to the people.

"My position is that the people of the Virgin Islands should have final say on the document," Turnbull said.

Delegate Michael Thurland, who generally supported the controversial portions of the draft, agreed that the document should have gone on through the process. DeJongh should not have assumed that some items would be seen as unconstitutional, he said.

"When you are putting something like a constitution together, there are things that will have to be tested. Let them be tested," Thurland said, who also is a sitting senator. "Let Congress, with all their attorneys and all their experts, test it."

Thurland, Turnbull and Golden all said that deJongh's decision did not surprise them. It did, however, shock delegate Gerard Emanuel. A passionate advocate for native rights, Emanuel said he did not see deJongh's action coming.

"I am at a loss for words, but I don't feel good about this," Emanuel said. "I respect the governor, and some of what he said made sense. I really have to think about this."

V.I. Delegate to Congress Donna Christensen would have guided the document through Congress. Even though deJongh halted the document before it got to Washington, Christensen said she feels that a constitution is necessary.

"I started out very hopeful that the constitution would be successful," she said. "I am hopeful that in the not-so-distant future, the people of the Virgin Islands will have their own constitution."

DeJongh said that he also would support re-starting the constitutional process, but that the proposal would need to originate in the V.I. Senate.

Sen. Craig Barshinger, who is also a delegate, already has been working on legislation to continue the constitution-drafting process. He is considering a bill that would allow a poll to determine what issues people want to see in the constitution.

"We could focus the revision on what people feel the constitution should have," Barshinger said.

Sen. Shawn-Michael Malone, who pushed to establish the Fifth Constitutional Convention in 2004, said that he is ready to keep the momentum going to get the Virgin Islands its own constitution. When the legislation creating the convention was passed,

Malone said he hoped that the territory could move away from being run by the federal government. That need is still there, and he sees this document's failure as a minor setback.

Malone said that considering the types of people who were elected delegates - former and current senators, former governors, former judges and several attorneys - he expected more from the convention. The way for future conventions to succeed is through unity of purpose, Malone said. He hopes the memory of the Fifth Constitutional Convention drives the territory to participate more in self-government matters in the future.

"We shouldn't be upset with what the governor decided today," Malone said. "We all participated in this process. Not the Senate. Not the governor. All of us have a stake in what happens in the Virgin Islands."

Senate President Louis Hill, who supported deJongh's decision, said that the people need some time to examine what just happened with the Fifth Constitutional Convention.

"I think everyone in the territory should just step back for a minute and let this whole fiasco settle down," Hill said. "Let all of this conflict rest before we embark on a new constitutional process."