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V.I. officials push for vote on constitution

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Gov. John deJongh Jr. testifies Wednesday. before the House Subcommittee on Insular Affairs, Oceans and Wildlife in Washington.

WASHINGTON - Testifying before Congress on Wednesday, Gov. John deJongh Jr., Sen. Usie Richards and Constitutional Convention President Gerard Luz James II resoundingly agreed that the controversial draft of a Virgin Islands constitution ought to be sent back to the territory's people for a final vote without a single word changed.

That was about the only thing they agreed on in almost three hours in front of the House Subcommittee on Insular Affairs, Oceans and Wildlife.

"We have all come to the same conclusion, but by different paths," deJongh said during the hearing. "While we may have legal challenges with the document, we need to give the people of the Virgin Islands that vote. It's right for our political maturation."

In a room full of spectators, James testified that the draft constitution, the culmination of more than a year of hard work by Fifth Constitutional Convention delegates, represents the political will of the territory's people and, in the context of the Virgin Islands, does not violate federal law.

DeJongh, however, denounced the draft as divisive, discriminatory and fundamentally flawed.

"As a matter of U.S. constitutional law, it is indefensible," he said. "As a political act, it is divisive, and as a matter of history, it is a dangerous step backwards in our centuries-long struggle, which has been joined by generations of Virgin Islanders, for full and equal civil rights."

Richards, who has not taken a side, told committee members that no matter what the document says, the ancestral people of the Virgin Islands have had their political fortunes dictated to them for centuries. It is time, he said, for their descendants to make up their own minds about a constitution.

The four House subcommittee members at the hearing - chairwoman Madeleine Bordallo of Guam, V.I. Delegate to Congress Donna Christensen, Puerto Rico Resident Commissioner Pedro Pierluisi and Alaska Congressman Don Young - all said the decision on what to do with the draft constitution won't be simple.

"This constitution is not perfect - and this committee will acknowledge its imperfections - but it needs our consideration," Bordallo said.

Legal issues

After 20 of 30 delegates to the Fifth Constitutional Convention approved the draft in May, the convention handed it off to Government House. DeJongh found that it did not meet legal mandates, so he refused to send it to the White House.

Six months later, he did send it to Washington after Presiding Superior Court Judge Darryl Donohue ruled that deJongh had a duty to do so.

President Barack Obama then sent a copy to the U.S. Justice Department for a legal review of the provisions. An 18-page Justice Department analysis was attached to the letter President Obama sent to Congress late last month to begin the next step toward ratification.

Jonathan Cedarbaum, a deputy assistant attorney general for the Justice Department, testified Wednesday about some of the legal concerns. Chief among them was the issue that caused the most debate during the Constitutional Convention: allowing certain rights and privileges only to those who could be classified as ancestral native Virgin Islanders and native Virgin Islanders.

According to the draft, ancestral native Virgin Islanders can trace their bloodlines back to those who were living in the Virgin Islands before 1932 - when the United States granted mass citizenship to people in the territory - and were not citizens of any other country. Native Virgin Islanders are defined as people who can trace their ancestry to those born in the territory after 1932.

The draft grants generous property tax breaks to ancestral native Virgin Islanders, who

would pay no taxes on their primary residences or undeveloped land.

Under the proposed constitution, only ancestral and native Virgin Islanders could be governor or lieutenant governor or vote on changing the territory's political status in relation to the United States.

"These provisions raise serious concerns under the equal protection guarantee of the U.S. Constitution, which has been made applicable to the U.S. Virgin Islands by the Revised Organic Act," Cedarbaum said. "Because we find it difficult to discern a legitimate governmental purpose that would be rationally advanced by these provisions, we recommend that they be removed."

Cedarbaum also told the committee that residency requirements for those who wish to hold public office - 15 years for governor or lieutenant governor and 10 years for potential judges - also seem too long.

Finally, Cedarbaum said, proposed language claiming territorial sovereignty over inter-island waters appears to be a stab at the federal government, the only entity that can claim such sovereignty.

Other Justice Department issues with the document include: the absence of a clause recognizing the supremacy of the federal government and the U.S. Constitution, guaranteeing a dedicated St. John seat in the Senate, imprecise language and additional conflicts between federal law and the draft constitution.

DeJongh, who qualifies as an ancestral native Virgin Islander under the document, said he was not surprised by the flaws the federal government found. Every competent lawyer who has reviewed it, including the convention's own legal counsel, has identified them, the governor said.

The draft's many problems "are so profoundly contrary to the most basic of American constitutional values," deJongh said. "The proposed constitution, with its carve-outs and special preferences, assails these fundamental values."

In his testimony, Richards summed up the struggle for territorial recognition in U.S. history. Referring to previous federal government actions conferring citizenship and recognition on indigenous people of other territories and states, Richards said it is only natural for Virgin Islanders to want more recognition.

That said, Richards acknowledged that the draft faces daunting legal challenges.

"There are findings from the Justice Department I agree with, and if this is passed, there will be challenges," Richards said. "However, I don't think there is any constitutional document that is beyond challenges, including the U.S. Constitution."

But James argued that what others see as legal difficulties are necessary to preserving

the character of the Virgin Islands people. Limiting the territory's top offices and any future status commissions to those with the deepest roots in the territory "address the unique culture and political backdrop of our islands," he said.

The property tax exemption, he said, would protect the "disenfranchised native population from significant, externally motivated commercial land speculation, which continues to result in the erosion of natives' ability to retain and purchase property."

"We strongly feel that these provisions are not discriminatory, do not violate federal law as it is presently applied to the Virgin Islands and support a compelling state interest," James said.

Later during the hearing, Cedarbaum said that the Justice Department would see the ancestral divisions in a different light if they did not confer rights and privileges, and merely referred to residents' ancestry.

Congressional conflicts

The four members of Congress who attended the hearing seemed conflicted.

Bordallo, Christensen, Pierluisi and Young all said they support the Virgin Islands' journey toward more self-governance, but the legal challenges gave them pause.

"Help me to understand why it's not a dereliction of our duty as Congress, why we should send this document back to the people even though it is contradictory to the legal authorization," Christensen said. "Don't we have an obligation to send the people of the Virgin Islands a document that would withstand legal challenges? That is my dilemma."

DeJongh had felt the same way, but now that the draft has gone to Congress, he urged committee members to just send it back to the territory. Whether the document is ratified belongs in the hands of the people - even if it prompts myriad legal challenges. Drafting a constitution is an exercise in self-determination, and any alteration by Congress - even to correct flaws - runs counter to that principle.

Richards agreed, saying that the people elected the delegates who wrote the document, and the people should be left to decide whether it is ratified.

"There is no one who is more important to me in this process than the voters," Richards said. "We ought to allow the persons who began this process to vote on this document."

Pierluisi said that as a close Caribbean neighbor, he supports what the Virgin Islands is trying to do, but the former attorney general in him feels unsettled about the legal issues. He suggested that the committee perhaps could approve the draft but include a resolution putting its concerns on the record.

"That way, we will do our duty, and it will reflect what we believe in," Pierluisi said. "I

am all for it. I want it to happen, but I cannot ignore that there are some flaws and think we should express that."

What next?

Subcommittee Chairwoman Bordallo said Wednesday's hearing began the process, and additional information, such as questions to testifiers as well as other written testimony, can be added to the official record for 10 days after the hearing.

DeJongh predicted that this draft constitution will not be ratified but said he would support immediately restarting the constitutional process in the territory and working to bring about a more successful sixth convention.

James pointed out that the document was written by 30 elected delegates, comprising past governors, senators, judges, attorneys and educators. He told the committee that it is their decision on what to do with it now.

"This is the process of Congress," James said. "I would be more than happy to have the people of the Virgin Islands contribute their rights to be able to vote on it. If it may pass, it will pass. If not, it will fail."