

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

**ADELBERT M. "BERT" BRYAN, INDIVIDUALLY
And OFFICALLY as a Delegate to the Fifth
Constitutional Convention AND MARY MOORHEAD,
INDIVIDUALLY and OFFICIALLY AS SECRETARY
OF THE Fifth Constitutional Convention,**

Plaintiffs,

v.

**FIFTH REVISION CONSTITUTIONAL CONVENTION,
29TH LEGISLATURE OF THE VIRGIN ISLANDS, and
GOVERNOR JOHN P. DE JONGH, OFFICIALLY AS
GOVERNOR OF THE VIRGIN ISLANDS OF THE
UNITED STATES,**

Defendants.

Civil No.: 2012-097

Action for Injunctive
Relief and for
Declaratory
Judgment

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DISTRICT COURT
ST. CROIX, V.I.

COMPLAINT

COME NOW, the Plaintiffs proceeding *Pro Se*, and hereby files this action for injunctive relief and for declaratory judgment. As for its Complaint, Plaintiffs allege as follows:

JURISDICTION

1. This Court has jurisdiction pursuant to 28 V.I.C. § 1331, Federal Question Jurisdiction: the Supremacy Clause of the United States, Article 6, cl. 2, applicable to the U.S. Virgin Islands applicable to the U.S. Virgin Islands, pursuant to 28 U.S.C. § 1561. The Court also has jurisdiction pursuant to the Declaratory Judgment Act. Venue is proper in the District Court of the Virgin Islands—Division of St. Croix, pursuant to 28 U.S.C. §

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1291(b), and on behalf of Plaintiffs' no other relief requested in this complaint has been made in any other forum.

PARTIES

2. Adelbert M. "Bert" Bryan ("Bryan"), as a duly elected Delegate to the Fifth Constitutional Convention ("Convention") has the standing to bring this claim on behalf of the Fifth Constitutional Convention pursuant to the Internal Operating Procedures of the Convention.
3. Adelbert M. "Bert" Bryan, individually, has standing to bring this action as a taxpayer, pursuant to 5 V.I.C. § 80.
4. Mary Moorhead ("Moorhead"), as a duly elected Delegate and Secretary of the Fifth Constitutional Convention has standing to bring this claim on behalf of the Fifth Constitutional Convention, pursuant to the Internal Operating Procedures of the Convention.
5. Mary Moorhead, individually, has standing to bring this action as a taxpayer, pursuant to 5 V.I.C. § 80.
6. 29th Legislature of the Virgin Islands is the First Branch of Government for the Government of the Virgin Islands, an Unincorporated Territory of the United States of America.
7. Fifth Revision Constitutional Convention ("FRCC") is a body created by the 29th Legislature of the Virgin Islands, through Act No. 7386, mandated to revise the Fifth Constitutional Convention's Draft Constitution whose members include the original 30 Delegates of the Fifth Constitutional and an additional five-member legal team tasked with making all revision for the original 30 Delegates.

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8. Governor John P. de Jongh, is the Governor of the Virgin Islands of the United States, an Unincorporated Territory of the United States of America. Governor de Jongh serves as the Chief Executive Officer for the Territory, and signed Act No. 7386 into law.

GENERAL ALLEGATIONS

9. Plaintiffs reallege and incorporate ¶¶1-8 fully at length herein.
10. On October 12, 1976, the United States Congress approved Public Law No. 94-584 which gave congressional authorization, in pertinent part, for the Virgin Islands to establish a constitutional convention.
11. On September 29, 2004, the 25th Legislature of the Virgin Islands passed Bill No. 25-0016 and thereafter it was signed into law and became Act No. 6688.
12. On May 26, 2009, the Convention, by majority vote, passed the draft of the proposed Constitution of the Virgin Islands pursuant to PL 94-584 and Act 6688. (See Exhibits 1 and 2 respectively).
13. On June 1, 2009, the Convention delivered the proposed Constitution to the Governor of the Virgin Islands in the persons of Gerard Luz James and Mary L. Moorhead, President and Secretary of the Convention respectively.
14. Pursuant to Act No. 6688, the Governor had ten (10) days to forward the proposed Constitution to the President of the United States pursuant to PL 94-584.
15. Once the proposed document arrives at the Office of the President of the United States, the President has sixty days to review the document and forward to Congress with whatever comments he may have.
16. Once the President has forwarded the proposed Constitution to the Congress with his comments, the Congress will have sixty days to approve, amend or make any

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modifications to the proposed Constitution before it is returned to the Virgin Islands for vote.

17. Having received the proposed Constitution on June 1, 2009, the Governor of the Virgin Islands had until June 11, 2009 to forward it to the President of the United States for review.
18. On June 11, 2009, the Governor held a press conference and stated clearly, and in defiance of Act 6688 and PL 94-584, that he was not going to forward the proposed Constitution to the President of the United States.
19. The Convention filed a writ of mandamus against the Governor of the Virgin Islands requesting the Court to order the Governor to comply with the law and forward the draft constitution to the President of the United States.
20. On December 23, 2009, the Court granted the Convention's writ of mandamus request and ordered the Governor to comply with the law and forward the draft constitution to the President of the United States.
21. On or about December 31, 2009, the Governor forwarded the draft constitution to the President of the United States.
22. On or about March 1, 2010, the President of the United States forwarded his comments on the draft constitution to the United States Congress ("Congress").
23. In the President's comments to Congress he made references to nine (9) areas of concerns cited by the United States Department of Justice ("USDOJ").
24. After review of the President's comments and hearings on such comments where members of the Convention, the Virgin Islands Delegate to Congress, the Governor of the Virgin Islands, and Senator Usie R. Richards testified before the House Committee with

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- jurisdiction, Congress amended Public Law 94-584 and passed Senate Joint Resolution No. 33. ("Joint Resolution")
25. The Joint Resolution, *inter alia*, amended Public Law No. 94-584 which authorizes the United States Virgin Islands to draft a constitution.
26. Public Law 94-584, and its amended version, only authorizes a constitutional convention to revise the proposed constitution, and does not give the Virgin Islands the authority to create a body that is not a constitutional convention to draft or revise a constitution and propose it.
27. The amended PL 94-584 provides that revisions to the draft constitution are to be prepared by the Convention and thereafter returned to directly to the President by the Convention. See, PL 94-584 §5.
28. The Fifth Revision Convention is not a reconvening constitutional convention.
29. Public Law 94-584 states in relevant part that the constitution, in each case, shall be deemed to have been approved by the Congress within sixty legislative days after its submission by the President, unless prior to that date, the Congress has approved the constitution, or modified or amended it, in whole or in part or has urged the constitutional convention to reconvene by joint resolution. See, PL 94-584 §5(b)
30. Public Law 94-584 provides in relevant part that if a convention reconvenes and revises the proposed constitution, the convention shall resubmit the revised proposed constitution simultaneously to the Governor of the Virgin Islands and the President. See, PL 94-584 §5(c).
31. Act 7386 gives the FRCC the authority to revise, adopt, and propose a constitution, which is in direct contravention to PL 94-584.

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32. Act 7386 provides in relevant part that the FRCC shall be comprised of the 30 elected delegates of the Convention and a legal team as comprised of five (5) attorneys to include the Chief Legal Counsel of the 29th Legislature of the Virgin Islands, an attorney appointed of the Virgin Islands Bar Association, an attorney appointed by the Governor of the Virgin Islands, an attorney appointed by the Chief Justice of the Supreme Court, and an attorney appointed by the President of the Legislature.
33. Act 7386 impermissibly grants the legal team the sole responsibility to revise or propose new provisions to the proposed constitution. In essence, Act 7386 establishes that only the legal team can offer proposed revisions to the FRCC for ratification and adoption.
34. Act 7386 does not specifically amend Act 6688, and therefore, Act 7386 creates a second entity to prepare a proposed constitution for the Virgin Islands.
35. The Convention is still in existence as Congress has simply returned the draft constitution to the Convention for revision and resubmission.
36. The Joint Resolution and amended PL 94-584 is controlling, and therefore, Act 7386 should be declared unconstitutional under the supremacy clause and in violation of federal law.

Count 1

(Violation of the Supremacy Clause of the United States Pursuant to Article 6, Cl. 2)

37. Plaintiffs reallege and incorporate ¶¶ 1-36 fully at length herein.
38. The Supremacy Clause of the United States Constitution mandates the preemption of federal law where there is a local law in conflict.
39. Act 7386 conflicts with PL 94-584, and therefore, PL 94-584 preempts.

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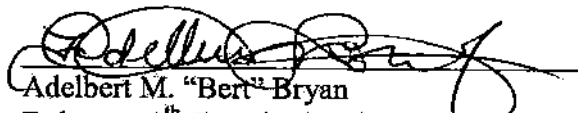
40. As a result of the Supremacy Clause of the United States, Act 7386 is in violation, and Plaintiffs are entitled to judgment as a matter of law that Act 7386 is in violation of federal law, and Plaintiffs are entitled to permanent injunctive relief.

WHEREFORE, for these reasons, Plaintiffs requests the following relief:


- a. A declaration that Act 7386 is in violation of Federal Law, and therefore, unconstitutional;
- b. Permanent Injunctive Relief precluding any action by the Fifth Revision Constitutional Convention;
- c. Costs and fees associated with this action; and
- d. Any and all other the relief the Court deems just, proper, and fair.

Respectfully Submitted:

Dated: September 27, 2012.


Adelbert M. "Bert" Bryan
Delegate, 5th Constitutional Convention
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Frederiksted, St. Croix
U.S. Virgin Islands 00841

Dated: September 27, 2012


Mary Moorhead
Delegate and Secretary,
5th Constitutional Convention
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