

MEMORANDUM

TO: Honorable Myron D. Jackson
Deputy Chief Legal Counsel

FROM: Yvonne L. Tharpes
Deputy Chief Legal Counsel

DATE: October 10 , 2018

SUBJECT: BR 18-1249 Analysis of St. Croix Retirees Initiative

This memorandum is in response to your request of October 4, 2018, for an analysis/ legal opinion on the ballot initiative petition filed with the Legislature by the Supervisor of Elections on October 1, 2018. For convenient reference the initiative's ballot measure reads as follows: "Title 2, Chapter 6 of the Virgin Islands Code, entitled Apportionment of the Legislature, is amended to read as follows: 'There are five (5) districts with nine (9) district Senators and six (6) at-large Senators

The following number of senators are apportioned to each district and the at-large district.

1. District of St. Croix, East, shall have two (2) Senators;
2. District of St. Croix, West, shall have two (2) Senators;
3. District of St. Thomas, East, shall have two (2) Senators;
4. District of St. Thomas, West, shall have (two) Senators;
5. District of St. John shall have one (1) Senator;

Elected by the qualified voters of each respective district.

6 St. Croix shall have three (3) at-large Senators; and

6. St. Thomas shall have three (3) at-large Senators

Elected by the qualified voters of the Virgin Islands as a whole.”

The initiative petition filed with the Legislature also contains the initiative proposal text, the ballot question to be presented to the voters at the General Election and a ballot summary. The initiative petition has been presented to the Legislature as required by the Revised Organic Act of the Virgin Islands, section 12, (b) (6), 48 U.S.C. §1593. Pursuant to section 12 of the Revised Organic Act, the Legislature has 30 days to accept or reject the initiative proposal. A discussion of the Legislature’s role in the initiative process and its options for complying with the requirements of the Revised Organic Act will be more fully presented below. Inasmuch as the presentation of St. Croix Retirees Initiative Petition has engendered numerous questions about nature, process of and

procedures for handling initiative petitions, the distinctions between some referenda and an initiative, and the power allocated between the Legislature and the people proposing the initiative , this memorandum will present a brief discussion of the process in general and a focus on the process under Virgin Islands law in particular and provide the answers to questions previously posed.

This analysis will conclude that because of certain constitutional defects and other legal deficiencies in the proposal , the Legislature should not accept the initiative. However, should be mindful during its proceedings that the Revised Organic Act requires an initiative rejected by the Legislature to be placed on ballot for the November 6, 2018 General Election, unless legislation is enacted providing for a special election.

INTRODUCTION

The initiative process is sometimes referred to as “direct democracy” or called “pure democracy” and involves having the citizens

as individuals vote on issues instead of elected representatives. Generally, the right of initiative enables citizens to bypass their state legislature by placing proposed statutes and, in some states, constitutional amendments on the ballot. An initiative generally is a direct voter action to enact a new law. It is a power reserved to the people.

The notion that the power to govern should be vested in the people can be traced from the early Athenian democracy and to the Swiss cantons in the late 1800's. Note, *Be it enacted by the people of the State of Kansas, Is it time for Kansas to Adopt Ballot Initiatives*, 37 Washburn L.J. 383 (1998) though ancient Athens is generally thought of as the first democracy- By the fourth century B.C., Athenian law provided citizens with a method of proposing new law. However, the Swiss cantons are credited with the creation of initiatives. *Id*, Washburn L.J. at 386-387 citing Richard B. Collins & Dale Oesterle, Structuring the Ballot Initiative Procedures that Do and Don't Work, U. Colo. L. Rev. 47, 53 (1995).

The first signs of modern-day popular legislation occurred **in** the sixteenth century Swiss valleys of Graubunden and Wallis. Note, 37

Washburn L.J. at 387 citing John Martin Vincent, *Government in Switzerland* 84 (Richard T. Ely ed., 1918).

Twenty-four States, the District of Columbia, Puerto Rico and the Virgin Islands have some form of an initiative process. The first state to adopt the initiative in its constitution at the state level was South Dakota in 1898. Note, 37 Washburn L.J. at 389. Close behind was Utah in 1900, as did Oregon in 1902. *Id.*

Ballot initiative systems were 'adopted by many states, between 1897–1915 in response to shady state legislatures corrupted by corporations and monopolies. Scot J. Williamson (1998) *Origins, history, and current use of ballot initiatives in wildlife management, Human Dimensions of Wildlife*, 3:2, 51-59, DOI: [10.1080/10871209809359125](https://doi.org/10.1080/10871209809359125) The last state to adopt an initiative process was Mississippi in 1992. Note, 37 Washburn L.J. at 391.

In the Virgin Islands although the people's right of initiative has been available for more than 30 years, no initiative has

successfully made it to the ballot. This is largely due to the nearly unsurmountable challenge in obtaining the required number of voter signatures to place an initiative on the ballot. By comparison, Legislature-initiated referenda have been placed on the ballot with relative frequency¹. Congress has also provided for referenda to be voted on by the people of the Virgin Islands.² Most of the referenda enacted by the Legislature of the Virgin Islands have been advisory rather than f binding effect.

An enactment adopted by referendum in most jurisdictions is distinguished from one adopted pursuant to the initiative process, in that the former emanates from the legislature, whereas the latter comes from the people. 42 Am Jur. 2d, *Initiative and Referendum*, §1. Title 18,

¹ See, e.g., Act No. 7644 to legalize medical marijuana; Act 7529, increase senators' term in office; Act No. 7395, production of Industrial Hemp; Act No. 6828, to provide for a referendum on the charter of municipal government; Act No. 6797, o provide for a special referendum election to determine public opinion on whether legislation legalizing casino gambling in the Virgin Islands should be adopted Act March 22, 1988,; Act No.6344 to petition Congress to change the size of the Legislature ; Act No. 6233, opinion poll on elected Attorney General; No. 5332, § 3(a), Sess. L. 1988, p. 118, provided: "A referendum shall be held on November 4, 1989, to enable the voters of the Virgin Islands to choose between Statehood, Independence, Free Association, Incorporated Territory, Status Quo, Compact of Federal Relations and Commonwealth; .Act April 2, 1964, No. 1174, Sess. L. 1964, p. 180, as amended by Act Aug. 11, 1964, No. 1246, Sess. L. 1964, p. 375, authorized a constitutional convention to be held at Charlotte Amalie, St. Thomas,

² See section 4 of the Revised Organic Act, requiring a referendum be held to change the voting age from 21 years of age to 18.

section 1 of the Virgin Islands Code defines “referendum” to mean a law passed by the Legislature in the form of a question submitted to the voters for approval or rejection.

Generally, an initiative is used by the people to enact new legislation. Whereas, a referendum places a law that has already been passed by the legislature to a popular vote.; and consequently, grants the people only the right to reject legislative. acts. *Id.* This distinction is blurred in the Virgin Islands, in that under section 12 (b) (1) of the Revised Organic Act, except as to certain exceptions not relevant here, an initiative may enact, amend, or repeal any law.

Initiatives are primarily of two types-direct and indirect. In the direct process, proposals that qualify go directly on the ballot for voting by the public. In the indirect process, they are submitted to the legislature, which may act on the proposal. States with some form of the indirect process are Maine, Massachusetts, Michigan, Mississippi, Nevada and Ohio. In Utah and Washington, proponents may select either the direct or indirect

method. It has been said that no two states have exactly the same requirements for qualifying initiatives to be placed on the ballot.

II. INITIATIVE PROCESS IN THE VIRGIN ISLANDS

Provisions for initiatives were enacted by Congress for the Virgin Islands in 1986. *See*, Pub. L. 99-396, § 13, 100 Stat. 837. Section 12 of the Revised Organic Act, captioned “governs the initiative process and procedures in the Virgin Islands. Subsection (a) of section 12 provides that “[t]he people of the Virgin Islands shall have the rights of initiative and recall “.

Similar to Maine, Massachusetts, Michigan, Mississippi, Nevada and Ohio. In Utah and Washington, the Virgin Islands has an indirect initiative process. This indirect initiative process consists of four major steps: First, the proposer must submit a to the Supervisor of Elections a petition containing the proposed initiative text and the signatures equal to at least 1 percent of the voters of each legislative district or 4 percent of all voters of the Virgin Islands must be submitted to the Supervisor of Elections prior to circulation for ballot qualification. Second, if the Supervisor of Elections determines that the requisite percentage of signatures has been obtained, the Supervisor of Elections must submit the petition to a titling committee consisting of the Attorney General, the

Supervisor of Elections and the legal counsel of the Legislature. Contrary to many comments and inquiries that have been made, **THE INITIATIVE TITLING COMMITTEE IS NOT THE PROPONENT OF THE INITIATIVE, PLAYS NO ROLE IN PROPOSING OR SUPPORTING THE MEASURE, HAS NO AFFIATION WITH NOR DUTY TO THE PROOSER OR PROPONENTS OF THE INITIATIVE.**

As mandated by section 12 (b) (5) of the Revised Organic Act, the initiative titling committee is required, in an open hearing, to prepare the official ballot title, the submission question, and a summary of the initiative proposal. The initiative titling committee has 30 days to complete this task after the preliminary petition is referred toit.

Under the third step of the initiative process, the proposer of the initiative must recirculate the petition with the proposal text, title and initiative summary and secure signatures equal to at least 10 percent of the voters of each legislative district or 41 percent of all voters of the

Virgin Islands and submit it to the Supervisor of Elections within 180 days.

Under step 4 of the initiative process, section 12 (b) (6) of the Revised Organic Act after the petition is resubmitted to the Supervisor of Elections and the Supervisor determines that the initiative petition has the requisite number of signatures, the Supervisor must forward r the certified proposal to the Legislature.

Once forwarded to the Legislature pursuant to section 12(b) (6) of the Revised Organic Act, the Legislature must within 30 days accept or reject the initiative proposal. The certified proposal was submitted to the Legislature on October 1, 2018. Therefore, the Legislature must either accept or reject the proposal by October 31. The only consequence of the Legislature's failure to act by the 30-day deadline is a mandate that the the initiative proposal "shall be submitted to the voters at the next general election."

Section 12 (b) (6) does not expressly prescribe the manner in which the Legislature is to accept the initiative, if it so desires. Nonetheless, it is clear that under the indirect initiative process, the requirement to submit the initiative to the Legislature provides an opportunity for the Legislature to enact the initiative. Whether direct or indirect, the end product of a successful initiative is an enactment. See, section 8 (a) of the Revised Organic Act. (The legislative authority and power of the Virgin Islands shall extend to all rightful subjects of legislation not inconsistent with this Act or the laws of the United States made applicable to the Virgin Islands); *Sec also* section 9 (b) of the Virgin Islands. Accordingly, if the Legislature intends to “accept” the initiative, that acceptance must begin with the introduction of a bill.

In addition to accepting the initiative and enacting it into law, the Legislature has the option of rejecting the initiative. If a bill to enact the initiative is voted down, the initiative is rejected. If the Legislature enacts a bill that is an amended version of the initiative, the initiative is deemed rejected. The Legislature could also postpone action in committee or on the floor indefinitely, or it could simply take no action in the 30-day period. The Legislature's failure to act within the 30-day period would be deemed a rejection under operation of law, under section 12 (b) (6). Of the Revised Organic Act At least one court has ruled that an indefinite postponement of action on an initiative constituted a rejection.

In a case that involved an indirect initiative, *Spahr v. Brown*, 19 Ohio App. 107, 10th District Ohio Court of Appeal, (Ohio App 1925), the court considered whether the Assembly's indefinite postponement of an initiative had the effect rejecting an initiative within the meaning of article II, section 1b of the . Ohio Constitution. Section 1b, Article II of the Ohio Constitution, governs initiatives and referenda. Although more complex than the requirements under the Revised Organic Act, the Ohio Constitution like the Revised Organic Act, gave the General Assembly options for addressing an initiative referred to it. Failing to pass the initiative, enacting the initiative in an amended form or taking no action for four months after received would trigger the requirement that the initiative be submitted to the voters. The court construed the rules of procedure that governed the General Assembly and found that indefinite postponement had a legislative meaning according to the rules of the House of Representatives. Hughes' American Parliamentary Guide for the Ohio General Assembly recognized by Rule 107 of the house and controlled in all cases not otherwise provided for. Section 206 of Assembly's rules stated that the motion for indefinite postponement is "an

adverse motion used to suppress or reject." The court ruled that o motion for indefinite postponement of the bill was properly brought before the house, and the house had jurisdiction over the bill. The action of the house approving the report of the committee and also providing for the indefinite postponement of the bill was, in the court's judgment, under the rules of the house, a rejection of the bill. The court held that a final disposition of the bill occurred by that action of the house.

The Legislature may be guided by the decision in *Spahr v. Brown*. Similar to that case Mason's Manual of Legislative Procedure, is expressly recognized in the Preamble to the Legislature's Rules as controlling in all cases not provided for by the Rules of the Thirty-Second Legislature. Pursuant to section 337.3 of Mason's, the practice has been long-established that when a bill is tabled or held in committee or postponed indefinitely, such action has the effect of an adverse final disposition of the bill. *See also* Rule 604 of the Rules of the Thirty-Second Legislature, which allows a committee to postpone a bill indefinitely. Consequently, if the St. Croix Retirees Initiative is assigned to committee and table indefinitely, the initiative must be placed on the ballot at the next general election.

Another form of rejection the Legislature has at its disposal is to enact its own version of the initiative. A legislative version of the initiative must be submitted to the voters. Another option the Legislature has available to it is inaction, to do nothing within the 30-day designated period.

However, it is preferable in the interest the direct democracy process for the Legislature to make a decision as soon as practicable if the initiative is to be submitted to the voters. Section 12 (b) (6) mandates that if the initiative is rejected in whatever manner, the initiative must be submitted to the voters in the next general election, which would be the November 6, 2018.

If the Legislature takes the full 30 days to decide on the action it take, early voters may not have an opportunity to vote on the initiative. However, to avoid the consequence of protracted legislative proceedings, the Legislature, pursuant to section 12 (b) (6) may enact legislation providing for a special election.

III. CONSTITUTIONAL ISSUES WITH THE INITIATIVE TEXT

In deciding whether to accept or reject the St. Croix Retirees Initiative, the members of the Thirty-second Legislature should carefully scrutinize the provisions of the proposed law. Even a cursory examination of the text of the proposed law will reveal that the proposal is an

incomplete treatment of the subject matter. Even though section 12 (b) (3) contains a single-subject clause limiting an initiative to one subject only and matters reasonably related to that subject, the text addresses too little of the subject matter to carry out the intent of the proposal. Thus, a description or depiction and map of the new districts are absent. Due to an drafting error, the residency requirements for district and at-large senators have been repealed. The measure also fails to provide for any amendments to the election code, particularly title 18, section 471.

The first sentence of the initiative text provides that: “Title 2, Chapter 6 of the Virgin Islands Code, entitled Apportionment of the Legislature, is amended to read as follows: ‘There are five (5) districts with nine (9) district Senators and six (6) at-large Senators.’” This proposed provision that redistricts the Virgin Islands into five legislative districts is not problematic because it increases the number of districts from two to five. On the contrary, the Third Circuit Court of Appeals in *Molenaar v. Todman*, 8 V.I. 3, 433 F. 2d. 359 (3d Cir. 1970) has opined that Congress under section 5 of the Revised Organic Act granted the

Legislature of the Virgin Islands the power to create new legislative districts, including a separate district for St. John, provided that constitutional equal protection requirements for fair representation are met. That is exactly the problem; the constitutional equal protection requirements for fair representations will not be met under this proposal.

The text of the initiative is devoid of any provisions from which a redistricting plan can be discerned. Absent from the measure is any map depicting or delineating how the districts are to be drawn, their boundaries, a description of where they begin and where they end. It is not sufficient merely to declare that there are five districts and name them as St. Croix East, St. Croix West, St. Thomas East, St. Thomas West and St. John.

Initiative proposers developing a redistricting plan, cannot simply and arbitrarily divide the territory up however they wish. The federal Constitution, other federal law and the Revised Organic Act limit where the lines can be drawn. There are no indications of any principles guiding

the redistricting plan proposed by the St. Croix Retirees. A depiction of where the lines should be drawn, is blatantly absent.

It is unclear as to what criteria were used in determining the boundaries of the several senatorial districts. The fact that St. John is an independent district suggests that the districts were not drawn on the basis of population or number of voters.

The National Conference of State Legislatures' Redistrict Resources defines "reapportionment" as the allocation of seats in a legislative body among established districts, where the district boundaries do not change, but the number of members per district does, and defines "redistricting" as the drawing of new political district boundaries. These are two distinct but interrelated concepts. Susan Bryoth Fox, Primer of Districting and Apportionment, Basic Facts (June 2001).

Understanding these definitions does not shed any light on the reapportionment/redistricting scheme advanced by the St. Croix Retirees in the initiative measure in issue.

The way the districts are divided will create problems of vote dilution. The proposed St. John district will have even less than its \$4000 plus population under the 2010 census. Assuming arguendo that each of the other four proposed districts has a population of 26,000, it would appear that the vote of each resident of St. John would be worth at least 300 times the value of the vote of each citizen in the four, two-member districts. The after the United States Supreme court decided a series of cases on the one-person-one vote rule which stand for the proposition that the sort of disparity described above would be unconstitutional in violation of the Equal Protection Clause.

The one person-on vote doctrine is applicable to apportionment and districting in the Virgin Islands. The Equal Protection Clause of the 14th Amendment and section 3 of the Revised Organic Act of the Virgin Islands mandate that the Territory's legislative districts, or persons-per-legislator, be of nearly equal population so that each person's vote may be given equal weight in the election of representatives as nearly as practicable, no matter in which district the vote is cast. A St. John election

district consisting of one senatorial seat will potentially invite judicial challenge on equal protection grounds under the one person one vote rule. St John with its population of approximately a little more than 4000 would prove to be more than a de minimus variation from the population equality of the other four districts. The United States Supreme Court has proclaimed that Like the right to vote, the right to an "equal" vote in terms of population per senator, is considered a "fundamental" right, and thus for which strict scrutiny is the standard. *Reynolds v. Sims*, 377 U.S. 533 (1954).

Section 5 (b) of the Revised Organic Act, 48 U.S.C. §1571 provides:

“The number of such senators shall be determined by the laws of the Virgin Islands. The apportionment of the legislature shall be as provided by the laws of the Virgin Islands: Provided, That such apportionment shall not deny to any person in the Virgin Islands the equal protection of the law: And provided further, That every voter in any district election or at large election shall be permitted to vote for the whole number of persons to be elected in that district election or at large election as the case may be. “

A state or territory must maintain standards for creating electoral districts. Beyond equalizing the population of districts and complying

with other federal requirements, courts have held that criteria such as creating compact, contiguous districts; keeping political units and communities within a single district; and avoiding the drawing of boundaries for purposes of partisan advantage or incumbent protection may be considered when developing districting plans. *Markoe v. Legislature*, 15 V.I. 3.

In the seminal case in the Virgin Islands, *Markoe v Legislature of the Virgin Islands*, 15 V.I. 3 (D.V.I.1978); 592 F.2d 188,(3d Cir. 1979), plaintiff Claude O .Markoe fought to have the Third Circuit Court of Appeals reverse the District Court's refusal to strike down an a reapportionment act, Act No. 3221 passed by the Legislature as constitutionally impermissible the reapportionment scheme under which the Legislature of the Virgin Islands, which constitutes the current apportionment scheme in effect since 1972- 7 senators in the district of St. Croix, 7 in the district of St. Thomas and St. John, and one at-large. Markoe asserted that there was invidious discrimination in that the last census prior to the enactment of the reapportionment plan revealed that the population of the legislative district of St. Croix was 31,779 residents and the population of the district of St. Thomas-St. John was 1,090 persons less than that of St. Croix. Markoe argued in the District Court below that under the holding of *Reynolds v. Sims*, 377 U.S. (1964) majority districts are to have majority representation and that since the Legislature of the Virgin Islands consists of 15 senators and a majority of 15 is 8, then the legislative district of St. Croix should have 8

senators and the legislative district of St. Thomas-St. John the remaining 7. As Markoe surmised, “the minority was ruling the majority, thus denying that majority, not only due process of law but the equal protection of the laws, as well”.

On appeal, plaintiffs alleged that the district court erred (1) in approving the plan on the basis of data other than that considered by the Senate in 1972; (2) in concluding that the senator at large represents the entire territory rather than just the district of his or her residence; (3) in refusing to give the residents of St. Croix a full eight votes in the Senate rather than seven votes and one senator at large; and (4) in admitting various evidence at the trial. Plaintiffs do not seek to alter either the districting of the Virgin Islands or the number of seats in the Senate. *Markoe*, 592 F.2d. 189. The plaintiffs further argued that the District Court erred in concluding that the Senate is evenly apportioned 7-7-1 rather than 8-7 in favor of St. Thomas-St. John. They point out that the senator at large must reside in St. John, which is included in the smaller of the two legislative districts. *Id.* 592 F.2d at 190. The Third Circuit

pointed out that the senator at large must be counted as a representative of the entire territory and not as a representative of St. Thomas-St. John alone., but noted that the court was asked to decide whether a different result would be dictated had plaintiffs proven that the senator at large was, in fact, a "front" for the interests of only one district Id.

The Third Circuit upheld the Legislature's reapportionment plan because there was no evidence that the senator at large's residing on St. John made the senator a representative of St. John as a separate district. The opinion suggests that if such was the case, there would have been a constitutional violation.

The Third Circuit, as did the District Court below, found that the Legislature had permissibly based its apportionment of the territory on gross population figures from the 1970 Census. It is unknown whether the initiative considered the population of each area in districting and apportioning the territory.

The District Court, citing *Reynolds v.*, instructed that a consideration of population is the starting point. Quoting *Reynolds v. Simms*, the District Court explained:

"Undeniably the Constitution of the United States protects the rights of all qualified citizens to vote, in state as well as in federal elections. A consistent line of decisions by this Court in cases involving attempts to deny or restrict the right of suffrage has made this indelibly clear. It has been repeatedly recognized that all qualified voters have a constitutionally protected right to vote... and to have their votes counted." (Emphasis supplied, and citations omitted.) *Id.* *Reynolds v. Simms* at 377 U.S. at 554.

"The right to vote freely for the candidate of one's choice is of the essence of a Democratic society, and any restrictions on that right strike at the heart of representative government. And the right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise". *Reynolds v. Simms*, 377 U.S. at 555.

The Court itself articulated the problem with which it was confronted as "... to ascertain, in the instant cases, whether there are any constitutionally cognizable principles which would justify departures from the basic standard of equality among voters in the apportionment in state legislatures *Id.* at 561."

Further on in the opinion the *Reynolds v. Simms* Court went on to say

"[since] the achieving of fair and effective representation for all citizens is concededly the basic aim of legislative apportionment, we conclude that the Equal Protection Clause guarantees the opportunity for equal participation by all voters in the election of state legislators. Diluting the weight of votes because of place of residence impairs basic constitutional

rights under the Fourteenth Amendment just as much as invidious discrimination based upon factors such as race, or economic status." (Emphasis supplied, and citations omitted). *Reynolds v. Simms* 377 U.S. at 565-566.

The holding in *Simms and Markoe* make it abundantly clear that under the basic constitutional standard of the Equal Protection Clause the seats in legislature must be apportioned on a population basis. Citizens' right to vote for senators of their choice is unconstitutionally impaired when the weight of their vote is in a substantial fashion diluted when compared with the votes of citizens living in St. John or in either of the other four districts. Therefore, a redistricting plan that would make St. John its own district would dilute the vote of persons living in any or all the other districts.

In addition to apportionment and districting problems, the initiative measure inadvertently repeals section 103 of title 2, chapter 6 of the Virgin Islands Code. By using the amendatory clause, "Title 2, Chapter 6 of the Virgin Islands Code, entitled Apportionment of the Legislature, is amended to read as follows:", the chapter will no longer include the provisions in section 103.

Section 103 of title 2. Section 103 sets forth residency requirements for senators and reads as follows: “

“No person is eligible to be a member of the Legislature who does not meet the requirements set forth in section 6(b) of the Revised Organic Act of the Virgin Islands. Additionally, no person is eligible to be a senator from a legislative district unless he has been a bona fide resident of the district for at least three consecutive years next preceding the date of his election; provided, that no person may be a candidate for the one at large seat unless he will have been a bona fide resident of St. John for at least three consecutive years next preceding the general election.”

Id.

Initiatives passed directly by the People, similar to laws passed by the Legislature, are subject to judicial review. *See, Romer v. Evans*, 517 U.S. 620 (1996)(overturning an anti-homosexual amendment to the Colorado Constitution passed by initiative); If an initiative violates the U.S. Constitution or the Revised Organic Act, then the initiative is void. See Revised Organic Act §8 (a) (The legislative authority and power of the Virgin Islands shall extend to all rightful subjects of legislation not inconsistent with this Act or the laws of the United States made applicable to the Virgin Islands).

IV. CONCLUSION

To summarize, the Legislature has 30 days, until October 31, 2018 to consider the subject initiative proposal. The Legislature may accept the initiative by enacting the initiative virtually unaltered. If the members decide to enact an amended version of the initiative, the amended version must be submitted to the voters along with the original initiative proposed by the St. Croix Retirees. The members may reject the initiative by not enacting it, postponing it indefinitely or by taking no action during the 30-day period.

The initiative is subject to the same constitutional standards as legislation passed by the Legislature. Certain legal defects subject the initiative to judicial challenges. Legislative districts must be divided on the basis of equal population, registered voter's compactness or some other reasonable basis that provides that preserves the one-person-one - vote rule. An indication of the tools or criteria used in dividing up the territory are undisclosed. No lines or boundaries have been drawn establishing the districts. The separate St. John District with its small population compared to the other four districts would have a deviate

greater deviation than the allowable 10%. See, *Markoe v. Legislature*, 15 V.I. 3 (D.V.I. 1978); 592 F.2d 188 (3d. Cir. 1079).

As drafted, the initiative repeals residency requirements for senators. It also fails to amend the election code to conform the ballot to multimember districts.

Congress has made no provision for the Legislature to enacted unilaterally an amended initiative without undergoing the referendum process. Moreover, the unless the Legislature enacts a measure that does not redistrict, there would not be sufficient time to enacted a resdistricting or reapportionment plan that would withstand judicial scrutiny.

