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SUPERIOR COURT
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Plaintiff,

CIVIL No. ST-18-CV-

) ACTION FOR
) DECLARATORY
) JUDGMENT AND
) INJUNCTIVE RELIEF

COMPLAINT

1. This Court has jurisdiction pursuant to 4 V.I.C. §76.
2. This court has jurisdiction to render a declaratory judgment pursuant to 5 V.I.C. § 1261 et seq.
3. This is an action to redress' violations of Virgin Islands Elections Law in particular, 18 V.I.C. § 41, Act 7892, and Act 7982.
4. Plaintiff, Government of the Virgin Islands is the governing entity of the Territory of the United States Virgin Islands and has the power to sue by Section 2 of the Revised Organic Act of 1954 and 3 V.I.C. § 114.

5. Defendant, Lilliana Belardo de O'Neal, upon information and belief, is a resident of St. Croix and was elected by St. Croix voters to be a member of the Board of Elections.

6. Defendant, Glenn Webster, upon information and belief, is a resident of St. Croix and was elected by St. Croix voters to be a member of the Board of Elections.

7. Defendant, Adelbert "Bert" Bryan, upon information and belief, is a resident of St. Croix and was elected by St. Croix voters to be a member of the Board of Elections.

8. Defendant, Raymond J. Williams, upon information and belief, is a resident of St. Croix and was elected by St. Croix voters to be a member of the Board of Elections.

9. Defendant, Ephiphane Joseph, upon information and belief, is a resident of St. Croix and was elected by St. Croix voters to be a member of the Board of Elections.

10. Defendant, Lisa Harris-Moorehead, upon information and belief, is a resident of St. Croix and was elected by St. Croix voters to be a member of the Board of Elections.

11. Defendant, Arturo Watlington, Jr., upon information and belief, is a resident of St. Thomas and was elected by St. Thomas and St. John voters to be a member of the Board of Elections.

12. Defendant, Lydia Hendricks, upon information and belief, is a resident of St. Thomas and was elected by St. Thomas and St. John voters to be a member of the Board of Elections.

13. Defendant, Carla Joseph, upon information and belief, is a resident of St. Thomas and was elected by St. Thomas and St. John voters to be a member of the St. Thomas-St. John District Board of Elections.

14. Defendant, Maurice A. Donovan, Jr., upon information and belief, is a resident of St. Thomas and was elected by St. Thomas and St. John voters to be a member of the Board of Elections.

15. Defendant, Alecia Wells, upon information and belief, is a resident of St. John and was elected by St. Thomas and St. John voters to be a member of the Board of Elections.

16. Defendant, Diane J. Magras-Urena, upon information and belief, is a resident of St. Thomas and was elected by St. Thomas and St. John voters to be a member of the Board of Elections.

17. Defendant, Ivy K. Moses, at all relevant times, was a resident of St. John and was elected by St. Thomas and St. John voters to be a member of the Board of Elections.

18. Prior to the passage of Act No. 7892 in 2016 and Act 7982 in 2017, 18 V.I.C. § 41 allowed for the existence of two boards - the St. Croix District Board of Elections and the St. Thomas and St. John District Board of Elections - and a Joint Board of Elections, comprising both district boards.

19. Act No. 7892 amended section 41(a) which now provides that “[t]here is a single Board of Elections that governs both election districts” thereby creating a single Board of Elections to govern both election districts. (See Exhibit B)

20. In March 2017, the Legislature made further amendments to Section 41 and with the passage of Act 7982, the 32nd Legislature of the Virgin Islands extended the date for the Boards of Elections to be a Single Board from January 1, 2017 to July 31, 2017. (See Exhibit C.)

21. Act 7982 also specifically mandated that “[b]y August 1, 2017, all members of the district boards of elections shall convene as a single board of elections, elect from among its members a chairman and a vice chairman and establish procedures for the board’s operation.”

22. Act 7982 further provides that “[n]otwithstanding any other statutory provision in title 18 to the contrary, the single Board of Elections shall assume and have jurisdiction, power, duties and responsibilities that were exercised by the district board and those powers, duties and responsibilities of the Joint Board as are appropriately exercised by the single Board of Elections”] and that “[t]he single board shall be the only policy making body and shall establish procedures for its operation.]”

23. While both district boards have convened as the Joint Board of Elections, the members have not to date convened as a “single” Board of Elections.

24. In contravention of Virgin Islands law, defendants continue to meet within their district and address matters concerning the election system and upcoming elections which legally are within the exclusive purview of the “single” Board of Elections. Exhibit A -Affidavit of Barbara E. Jackson McIntosh.

Count I

Failure to Convene as a Single Board of Elections

25. Government restates and re-alleges paragraphs 1-24 of this Complaint as if fully set forth herein.

26. Act No. 7982, Section 5(a), in pertinent part, provides that, by August 1, 2017, all members of the district boards of elections shall convene as a single board of elections.

27. Act No. 7982, Section 5(b), also provides that, the single Board of Elections shall assume and have jurisdiction, power, duties, and responsibilities that were exercised by the district boards.

28. Act No. 7982, Section 5(c) unequivocally states that the single Board of Elections is the only policymaking body that can establish the procedure for elections within the Virgin Islands.

29. On August 29, 2017, and February 13, 2018, board members elected by St. Croix voters met and discussed business, including but not limited to, the St. Croix Election System staff and replacement of polling places. (See Exhibit A-4)

30. On January 22, 2018 and April 5, 2018, board members elected by voters of St. Thomas and St. John met and discussed matters relating to the 2018 Elections, including polling places and early voting. (See Exhibit A-5)

31. To date, the members of the district boards have not convened as a single board of elections to conduct business related to the Election System.

32. The Government of the Virgin Islands is entitled to a declaratory judgment adjudging that the members of the district boards failed and refused to convene a "single" board by August 1, 2017 as required by Virgin Islands law.

33. The Government of the Virgin Islands is entitled to a declaratory judgment adjudging the defendants have acted in contravention of Virgin Islands law by conducting district boards meetings after August 1, 2017.

34. The Government of the Virgin Islands is entitled to a declaratory judgment nullifying all decisions made by district boards after August 1, 2017.

Count II

Failure to elect Chairperson and Vice Chair of the Single Board of Elections

35. Plaintiff restates and re-alleges paragraphs 1-34 of this Complaint as if fully set forth herein.

36. Act No. 7982, Section 5(a), in pertinent part, provides that, by August 1, 2017, convene as a single board of elections and elect from among its members a chairman and a vice chairman, and establish procedures for the board's operation.

37. Act No. Section 5(b) in pertinent part, provides that those powers, duties and responsibilities of the Joint Board are appropriately exercised by the single Board of Elections.

38. On December 22, 2017, and January 26, 2018, board members elected by St. Thomas, St. John and St. Croix voters convened joint board meetings. (See Exhibits A-2 and A-3)

39. On the Joint Board Official Agenda for both meetings, under New Business, was Act No. 7982, specifically relating to the election of officers for the Single Board of Elections.

40. At the December 22, 2017 meeting the quorum was lost and therefore the board members in attendance were unable to vote and elect either a Chair or Vice Chair to convene business as "single" board of elections. (See Exhibit A)

41. At the January 26, 2018 meeting, the contentious behavior of two board members made it impossible for this agenda item to be discussed and the meeting was adjourned. (See Exhibit A)

42. The Government is entitled to declaratory judgment stating that the members of the Joint Board of Elections have failed and refused to elect a Chair and Vice-Chair of the "single" Board of Elections as mandated by Act. No. 7982.

Count III

Injunctive Relief

43. Government restates and re-alleges paragraphs 1-42 of this Complaint as if fully set forth herein.

44. Act No. 7982, Section 5(a), in pertinent part, provides that, by August 1, 2017, all members of the district boards of elections shall convene as a single board of elections.

45. Act No. 7982, Section 5(b), also provides that, the single Board of Elections shall assume and have jurisdiction, power, duties, and responsibilities that were exercised by the district boards.

46. Act No. 7982, Section 5(c) unequivocally states that the single Board of Elections is the only policymaking body that can establish the procedure for elections within the Virgin Islands.

47. On August 29, 2017, and February 13, 2018, board members elected by St. Croix voters met and discussed business, including but not limited to, the St. Croix Election System staff and replacement of polling places. (See Exhibit A-4)

48. On January 22, 2018 and April 5, 2018, board members elected by voters of St. Thomas and St. John met and discussed matters relating to the 2018 Elections, including polling places and early voting. (See Exhibit A-5)

49. On December 22, 2017, and January 26, 2018, board members elected by St. Thomas, St. John and St. Croix voters convened joint board meetings.

50. On the Joint Board Official Agenda for both meetings, under New Business, was Act No. 7982, specifically relating to the election of officers for the Single Board of Elections.

51. At the December 22, 2017 meeting the quorum was lost and therefore the board members in attendance were unable to vote and elect either a Chair or Vice Chair to convene business as "single" board of elections.

52. At the January 26, 2018 meeting, the contentious behavior of two board members made it impossible for this agenda item to be discussed and the meeting was adjourned.

53. The Government is entitled to an order compelling the defendants to forthwith convene as the single Board of Elections and vote to elect Chair and Vice Chair of the single Board of Elections.

54. The Government is entitled to an order enjoining the members of the Board of Elections in the St. Croix District and the members of the Board of Elections in the St. Thomas and St. John District from conducting District Board meetings or Joint Board meetings in violation of Virgin Islands law.

WHEREFORE, Government of the Virgin Islands prays for judgment against all named defendants as follows:

A. That the Court enter a Declaratory Judgment adjudging that the members the district boards have failed and refused to convene a "single" Board of Elections by August 1, 2017.

B. That the Court enter a Declaratory Judgment adjudging that district board meetings after August 1, 2017 were in contravention of Virgin Islands law.

C. That the Court enter a Declaratory Judgment nullifying any and all decision made by district boards after August 1, 2017;

D. That the Court enter a Declaratory Judgment stating that the members of the Joint Board of Elections have failed and refused to elect a Chair and Vice-Chair of the "single" Board of Elections.

E. That the Court enter a Declaratory Judgment, pursuant to 18 VIC § 41, Act No. 7892 and Act No. 7982, the single Board of Elections is the only policymaking body that can establish the procedure for elections within the Virgin Islands.

F. That the Court enter an order compelling the defendants to convene forthwith as a single Board of Elections to vote and elect a Chair and Vice Chair.

G. That the Court enter an order enjoining the members of the Board of Elections in the St. Croix District and the members of the Board of Elections in the St. Thomas and St. John District from conducting District Board meetings or Joint Board meetings in violation of Virgin Islands law.

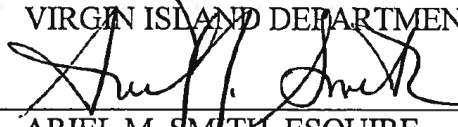
H. Award Government of the Virgin Islands reasonable attorney's fees and costs;
and

I. Such other and further relief as the Court may deem appropriate.

Dated: April 11, 2018

By:

RESPECTFULLY SUBMITTED,
CLAUDE EARL WALKER, ESQUIRE
VIRGIN ISLAND DEPARTMENT OF JUSTICE


ARIEL M. SMITH, ESQUIRE

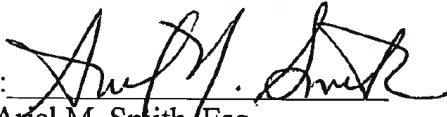
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SUPERIOR COURT

COMES NOW, the Plaintiff, Government of the Virgin Islands by its counsel, Virgin Islands Department of Justice, and hereby moves this Court, pursuant to V.I. R. Civ, P 65, for a Temporary Restraining Order and Preliminary Injunction restraining and enjoining the above named s Defendants, who are members of the Board of Elections, from illegally conducting meetings as “district boards” or a Joint Board contrary to the strictures of 18 V.I.C. § 41 and compelling Defendants to forthwith convene as a Single Board as required by Act. No. 7982. The basis for this motion is fully set forth in the memorandum filed herewith. Defendants further inform the Court that the Defendants have scheduled a meeting for **Friday, April 13, 2018** and given past practice, it is unlikely that the single board will be convened and a Chair and Vice Chair will be elected without court intervention. For reasons set forth therein, it is respectfully requested that the relief sought be granted.

DATED: April 11, 2018

Respectfully Submitted,
CLAUDE EARL WALKER, ESQ.
ATTORNEY GENERAL

By: 
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) **ACTION FOR**
) **DECLARATORY**
) **JUDGMENT AND**
) **INJUNCTIVE RELIEF**

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Lydia Hendricks <lydia.hendricks@boel.vi.gov>

Maurice A. Donovan, Jr. – maurice.donovan.jr@boel.vi.gov

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Lisa Harris-Moorehead - lisa.harris-moorehead@boel.vi.gov

Raymond Williams - Raymond.williams@boel.vi.gov

Adelbert M. Bryan – adelbert.bryan@boel.vi.gov

Ephiphane Joseph – epiphanceej@gmail.com

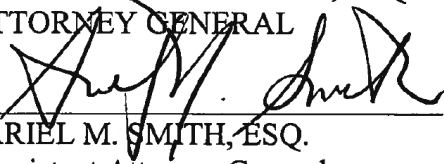
4. The Government will also serve Defendants pursuant to Rule 4 of the V.I. Rules of Civil Procedure.

5. That, pursuant to V.I. Civ. P. Rule 65(b)(1)(B), adequate notice has been given to Defendants of the Government's application for a Temporary Restraining Order and other Injunctive Relief.

DATED: April 11, 2018

Respectfully submitted,

CLAUDE EARL WALKER, ESQ.
ATTORNEY GENERAL

By: 

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SUPERIOR COURT

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DISTRICT OF ST. THOMAS AND ST. JOHN**

GOVERNMENT OF THE VIRGIN ISLANDS,

Plaintiff,

v.

**Lilliana Belardo de Oneal, Glenn Webster
Adelbert "Bert" M. Bryan, Raymond J. Williams,
Ephiphane Joseph, Lisa Harris-Moorehead, Esquire
Arturo Watlington, Jr. Esquire, Lydia Hendricks,
Carla Joseph, Maurice A. Donovan, Jr., Alecia
Wells, Diane J. Magras-Urena, Ivy K. Moses.**

Defendants.

CIVIL No.ST-18-CV-

**) ACTION FOR
) DECLARATORY
) JUDGMENT AND
) INJUNCTIVE RELIEF**

**MEMORANDUM OF LAW IN SUPPORT OF
MOTION FOR TEMPORARY RESTRAINING ORDER
AND PRELIMINARY INJUNCTION**

COME NOW Plaintiff, Government of the Virgin Islands by and through its counsel, Virgin Islands Department of Justice ((hereinafter "Government")) and hereby moves this court pursuant to V.I. Civ. P. 65 for a Temporary Restraining Order and Preliminary Injunction restraining and enjoining all Defendants herein from conducting any Election System meetings unless such meeting are conducted by the "single" Board of Elections". Any and all actions, decisions or determinations by the above named defendants in their capacity as members of the St. Thomas-St. John Board of Elections or St. Croix Board of Elections, after August 1, 2017, are illegal and should be nullified as they were done in contravention of Virgin Islands law. In joint board meeting held in December 2017 and January 2018, board members have failed and/or refused to convene as a "single" Board and elect a Chair and Vice-Chair as required by Act. No. 7982. A

joint board meeting is scheduled for Friday, April 13, 2018 and given past practice, it unlikely that the single board will be convened and a Chair and Vice Chair will be elected without court intervention.

1. FACTUAL BACKGROUND

Prior to the passage of Act No. 7892 in 2016 and Act 7982 in 2017, 18 V.I.C. § 41 allowed for the existence of two boards - the St. Croix District Board of Elections and the St. Thomas and St. John District Board of Elections - and a Joint Board of Elections, comprising both district boards. Act No. 7892 amended section 41(a) which now provides that “[t]here is a single Board of Elections that governs both election districts” thereby creating a single Board of Elections to govern both election districts. Exhibit B. In March 2017, the Legislature made further amendments to Section 41 and with the passage of Act 7982, the 32nd Legislature of the Virgin Islands extended the date for the Boards of Elections to be a Single Board from January 1, 2017 to July 31, 2017. Exhibit C. Act 7982 also specifically mandated that “[b]y August 1, 2017, all members of the district boards of elections shall convene as a single board of elections, elect from among its members a chairman and a vice chairman and establish procedures for the board’s operation.” Act 7982 further provides that “[n]otwithstanding any other statutory provision in title 18 to the contrary, the single Board of Elections shall assume and have jurisdiction, power, duties and responsibilities that were exercised by the district board and those powers, duties and responsibilities of the Joint Board as are appropriately exercised by the single Board of Elections” and that “[t]he single board shall be the only policy making body and shall establish procedures for its operation.”

While both district boards have convened as the Joint Board of Elections, the members have not to date convened as a "single" Board of Elections. In contravention of Virgin Islands law, defendants continue to meet within their district and address matters concerning the election system and upcoming elections which legally are within the exclusive purview of the "single" Board of Elections. Exhibit A -,Exhibit A-4 and Exhibit A-5)

By way of background, the Legislature of the Virgin Islands enacted Title 18, Chapter 3, of the Virgin Islands Code, to govern elections with the Virgin Islands and delegated authority to the Board of Elections to register electors and to conduct of primary elections and general elections. 18 V.I.C § 41, et seq. More particularly, 18 V.I.C. § 47, outlines the power and duties of the Board of Elections, which include, but are not limited to:

- (2) performing all functions with respect to the registration and party enrollment of electors within its election district, as vested in it by this title;
- (3) preserving, storing and maintaining registers and primary and election equipment of all kinds, including ballot boxes and any other equipment used in voting;
- (4) issuing certificates of appointment to election officers and clerks;
- (5) making and issuing such rules, regulations and instructions, not inconsistent with law, as it may deem necessary for the guidance of election officers and other assistants, and electors;
- (6) instructing election officers and other assistants in their duties, in conformity with directives, rules and regulations issued by the boards of elections, calling them together in meeting whenever deemed advisable, and inspect systematically and thoroughly the conduct of registration of electors, and of primaries and elections in the polling places in the election districts to the end that primaries and elections may be honestly, efficiently, and uniformly conducted;

(7) preparing, posting, and publishing, in the manner provided by law, all notices and advertisements in connection with the registration of electors and the conduct of primaries and elections, which may be required by law;

(8) investigating election frauds, irregularities and violations of this title, and report all suspicious circumstances to the Virgin Islands Department of Justice for possible prosecution;

(9) receiving from election officers the returns of all primaries and elections, canvass, and compute the returns, and certify, no later than fifteen days following the primary or election, the results thereof to the Supervisor of Elections;

(13) promulgating and issuing uniform rules and regulations for the administration and enforcement of the election laws throughout the United States Virgin Islands.....

Emphasis added. 18 V.I.C. § 47(2),(3), (4), (5),(6),(7),(8),(9) and (13).

Act No. 7982 Section 5(a) provides that, by August 1, 2017, all members of the district boards of elections shall convene as a single board of elections and elect from its members a chairman and vice chairman, and establish procedures for the board's

operation. (See Exhibit C). In addition to electing a Chair and Vice Chair of the newly formed single Board of Elections, the single Board would assume and have jurisdiction, power, duties, and responsibilities previously exercised by the district boards in addition to the powers, duties, and responsibilities of the Joint Board. The law also provides that the single board is the only policymaking body and must establish the procedure of its operation. (See Exhibit C).

On July 6, 2017, the Joint Board of Elections held a meeting where the agenda included discussion on Act No. 7892. (See Exhibit A-1) While there was discussion related to the creation of his single board, the single board was not officially convened and no Chair or Vice Chair was elected. Thereafter, on August 29, 2017, and February 13, 2018, the members of the St. Croix Board of Elections met and discussed election

matters related to the St. Croix Election System staff including replacement polling places. (See Exhibit A-4).

On January 22, 2018 and April 5, 2018, the members of the St. Thomas-St. John Board of Elections met and discussed matters relating to the 2018 Elections, including polling places and early voting. (See Exhibit A-5). To date, neither the district boards nor the Joint Board have convened as the "single" Board of Elections nor have they elected a Chair or Vice Chair.

2. STANDARDS AND ARGUMENTS FOR TEMPORARY RESTRAINING ORDER

In deciding whether to grant a preliminary injunction, the Superior Court must consider four factors: (1) whether the movant has shown a reasonable probability of success on the merits; (2) whether the movant will be irreparably injured by denial of the relief; (3) whether granting preliminary relief will result in even greater harm to the non-moving party; and (4) whether granting the preliminary relief will be in the public interest. *Marco St. Croix, Inc. v. V.I. Hous. Auth.*, 62 V.I. 586, 590 (V.I. 2015) (quoting *Yusuf v. Hamed*, 59 V.I. 841, 847 (V.I. 2013)). The movant bears the burden of "making some showing on all four injunction factors". The Superior Court "must evaluate the moving party's showing on all four factors under a sliding scale standard" by making findings on each of the four factors and determining "whether—when the factors are considered together and weighed against one another—the moving party has made 'a clear showing that [it] is entitled to injunctive relief.'" *3RC & Co., Inc. v. Boynes Trucking Sys.*, 63 V.I. 544, 557 (V.I. 2015) (quoting *Yusuf*, 59 V.I. at 847). The facts set forth above and the discussion below clearly demonstrate that the Government is entitled

to immediate injunctive relief in order to preserve and protect the integrity of the 2018 Virgin Islands Primary and General Elections.

3. DISCUSSION

(A) REASONABLE PROBABILITY OF SUCCESS ON THE MERITS

To date, a “single” Board of Elections has not been convened nor have the Defendants elected a Chair or Vice Chair to conduct the business of the 2018 Election. (See Exhibit A- Affidavit of Barbara McIntosh). As the Defendants are well aware, 2018 is a general election year and it is probable that a primary election will be also held. The Legislature with its most recent amendment to 18 V.I. C. § 41 determined that all rules and regulations pertaining to registration of electors, primary elections and general elections were to be made by the “single” Board of Elections. It specifically intended that the “single Board of Elections ... assume and have jurisdiction, power, duties and responsibilities that were exercised by the district boards **and** those powers and responsibilities of the Joint Board ... are [to be] appropriately exercised by the single Board of Elections) Act No. 7982, Sec. 5(b). It also promulgated that the “single board shall be the **only** policy making body and shall establish the procedures of its operation. 2017 V.I. Sess. Law 7982 Sec.5(c).

The language of the Act 7982 is clear and unambiguous. The legislature unequivocally eliminated the district boards and joint board and established a single board of elections. It is well established that when construing a statute “[w]e begin with a review of the applicable statutes and their legislative history to ascertain and give effect to the intent of the legislature[.]” *In re Joseph*, 2016 V.I. Supreme LEXIS 25 (VI. 2016). The words within each of the statutes are presumed to manifest the intentions of

Legislature. *See id.* As the United States Supreme Court has made clear on many occasions, “courts must presume that a legislature says in a statute what it means and means in a statute what it says there.” *Connecticut Nat'l Bank v. Germain*, 503 U.S. 249, 253-254 (U.S. 1992). The “words and phrases” in the statutes “shall be construed according to the common and approved usage of the English language.” 1 V.I.C. § 42. It is well-established that “[i]f the language [of a statute] is clear and unambiguous, there is no need to resort to any other rule o[f] statutory construction.” *In re Petition for the Expungement of Criminal Record*, 2017 V.I. Supreme LEXIS 4 (VI. 2017)(citations omitted). In this instance, the words of the statute are plain and clear.

Notwithstanding the plain, unambiguous language of the statute, the Defendants by their actions continue to ignore and rebuff the statute. Since August 1, 2017, the Joint Board of Elections convened on December 22, 2017 and January 26, 2018. On the agenda of both meetings, was the election of officers for the Single Board of Elections. (See Exhibits A-3 and A-4). While a quorum was initially present at the December 2017 meeting, at the time for discussion of the election of Chair and Vice Chair for the “single” Board meeting, the quorum no longer existed as members left before a vote could be taken. (See Exhibit A - Affidavit of Barbara McIntosh). At the January 26, 2018 meeting a quorum was also present at the beginning of the meeting. Prior to addressing the agenda item of Act No. 7982, a confrontation ensued between two members of the joint board and meeting was adjourned. **The next meeting of the Joint Board of Elections is Friday, April 13, 2018.**

Instead of complying the Virgin Islands law, members of the “St. Croix District Board” have met on August 29, 2017 and February 13, 2017. (See Exhibit A-4)

Likewise, members of the "St. Thomas-St. John District Board" met on January 22, 2018, April 5, 2018 and have planned another meeting for April 16, 2018. See Exhibit A-5 and Exhibit D- Daily News article). Most recent newspaper articles regarding St. Thomas district board confirm that are continuing to meet and are challenging the law by their actions. (See Exhibit D- Daily News article dated Friday, April 6, 2018) The election boards acknowledge Act No. 7892 which creates a "single" but nonetheless continue to have "district boards" and "joint board" meetings deliberately violating Virgin Islands Law. The Government's probability of success on the merits based on the Defendants' open and flagrant violation is great.

(B) IRREPARABLE HARM

The Defendants' actions place the integrity and efficient administration of the 2018 election in jeopardy. The single Board of Elections has several critical functions which include, but are not limited, to selecting polling places, establishing policy relating to the primary and general elections, approval of ballots, and directing the election system staff. With the passage of Hurricane Maria and Hurricane Irma, several of the usual polling places have been severely damaged. Additionally, the 2018 Elections Systems Calendar (Exhibit E) shows that preparation for the 2018 election by the single Board must begin immediately as many of the statutory deadlines are imminent. The single Board must convene forthwith so that it can put in place the plans and policies for the coming election cycle. The Legislature with the creation of a single Board anticipated that all decisions related to the elections in both districts would be made by the single Board and not district boards. The continual meetings of the "district boards" also reflect an urgency of matters that must be decided in anticipation of the upcoming

elections. However, the passage of Act No. 7982 unequivocal states that the "single" Board is the only policy making body that can shall establish the procedure for the elections. Given this mandate, continued disregard of the law by Defendants creates irreparable harm to the voters, the prospective candidates, and, significantly, it undermines the entire democratic electoral process.

The Government has an important role in preserving the integrity, stability, and reliability of the electoral process. The board members have been selected by the voting public to safeguard and maintain the transparency and propriety of elections and this outweighs any difference of opinion by any member of the Board as to Act No. 7892 or Act No. 7982. To permit board members to meet and make set policy for upcoming elections without convening as a single Board and electing a Chair and Vice Chair not only violates the law but it would sanction board members' blatant, flagrant and defiant violation of the law and result in voter apathy and loss of confidence in the fairness and integrity of the system.

Courts have repeatedly held that violation of the law establishes irreparable harm and requiring violators to comply with the law serves the public interest. *Wheels Mech. Contracting & Supplier v. W. Jefferson Hills Sch. Dist. & Nello Constr.*, No. GD-16-009633, 2016 Pa. Dist. & Cnty. Dec. LEXIS 11985, at *12 (C.P. Dec. 1, 2016); *Fairfield Area Sch. Dist. v. Nat'l Org. for Children*, 59 Pa. D. & C.4th 158, 176 (C.P. 2001)(holding that "an injunction is necessary to prevent a continuing violation of the law and therefore immediate and irreparable harm."); *Wilderness Soc'y v. Rey*, 180 F. Supp. 2d 1141, 1145 (D. Mont. 2002(plaintiff entitled to preliminary injunction and will suffer irreparable harm where defendant violates the law.) Court have also held that a

party need not prove irreparable harm where the defendant violates the law. *Town of Wellesley v. Javamine, Inc.*, 21 Mass. L. Rep. 12 (2006) (explaining that in instances in which a governmental agency seeks preliminary injunctive relief in the public interest, that agency need not demonstrate irreparable harm so long as the challenged conduct results in violation of the law and the challenged conduct harms or adversely affects a public interest); *Morgan City v. Ascension Par. Police Jury*, 468 So. 2d 1291, 1300 (La. Ct. App. 1985)(holding that when the plaintiff in an injunction proceeding alleges the defendant is acting in violation of the law, there is no need to prove irreparable harm). Similarly, the Government has satisfied the irreparable harm requirement.

(C) BALANCING OF HARM

There is absolutely no harm to defendants if they are directed to follow the law. Further, when a defendant's actions are found to be intentional, a court is not required to balance the hardships. "Indeed, courts have deemed the application of the balancing test as 'improper' in such instances and the offending party is said to have acted at his own peril. See *Estates of Enfield Green Owner' Assoc., Inc. v. Francis* 1995 WL 78297(D.Virgin Islands).

Moreover, any harm, if any, to Defendants is slight in comparison to voters, and prospective candidates. Moreover, the Plaintiff has the responsibility and obligation enforce the elections laws, and exercise its statutory and regulatory powers for the protection of the public good and maintenance of confidence and integrity of the elections in the Virgin Islands. The harm to the public interest and to the government's legitimate interest in protecting the elections system, the democratic process and ensuring adherence to the laws passed by the Legislature far outweigh any speculative loss to

Defendants. Finally, Plaintiff would be without any adequate remedy at law to enforce its regulatory powers and, therefore, the issuance of injunctive relief is the only vehicle to prevent Defendants from continuing to violate the law, and to prevent Defendants from creating unnecessary chaos and confusion in the administration of the 2018 elections.

The only appropriate remedy in this case is injunctive relief.

(D) PUBLIC INTEREST

It is clearly in the public interest of the people of the Virgin Islands for the Board of Elections to convene as a "single" Board, elect a Chairperson and Vice Chair and thereafter legally fulfill its duties and responsibilities for the upcoming 2018 Election season and beyond. The decision of the "district boards" to ignore Virgin Islands law and meet separately is not in the best interest of the voters, prospective candidates or the general public. It is not in the interest of the public for elected officials to violate the law with impunity. Neither is it in the best interest of the public for elected officials to violate the law without consequence. The public interest is served by requiring Defendants to obey the law.

Since March 2017, the board members knew or should have known that Act No. 7892 created a single Board and that a Chair and Vice Chair need to be elected to conduct the business of the Election System. Notice and knowledge of Defendants members is evidenced by the agenda of the August 2017 and February 2018 joint board meetings where the single board is reflected as an agenda item. Defendants had notice and several opportunities to comply. Defendants chose instead to conduct meetings contrary to law and make decision that are solely within the discretion of the single Board. It is in the

public interest and the public good for all concerned herewith to insure that law is upheld and board members be required to follow the strictures of Act No. 7982.

4. CONCLUSION

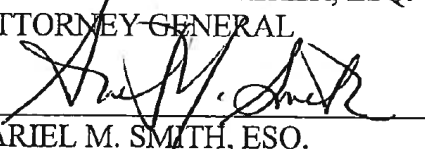
Based on the foregoing, the Government posits that all four (4) factor favor issuance of a Temporary Restraining Order and Preliminary Injunction in this matter to restrain and enjoin the board members from scheduling and conducting election business at "district" meetings or Joint Board meetings. The should be compelled to comply with Act No. 7982 and a "single" board and thereafter elect a Chair and Vice Chair for the purpose of complying with statutory duties and responsibilities set forth in 18 V.I.C. 47. The Defendants should also be enjoined from meeting as district boards or a Joint Board and this court should declare that actions taken by district boards after August 1, 2017 should also be deemed a nullity as they are in contravention of Virgin Islands law.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court issue a Temporary Restraining Order, Preliminary and Permanent Injunction preventing the Defendants to continuing to violate the law.

DATED: April 11, 2018

Respectfully submitted,

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ATTORNEY GENERAL

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