

Opinion: Pushing for Systemic Change in the Territory, Starting With the Legislature

Mark Hodge's proposal for systemic change: numbered seats in legislative elections

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Editor's Note: In this submission, attorney Mark Hodge outlines the first step in his plan for systemic change in the U.S. Virgin Islands – a different way to manage legislative elections.

Why is this the first step? At the moment, our Legislature does not function like a proper legislature comprised of colleagues, and to complete any of the other steps to achieve critical systemic change, we will first need an efficient Legislature so that the best public policy can be enacted without the petty one upmanship campaigning that is inherent in our Legislature's very structure.

What is the problem with our Legislature? The problem with our Legislature is how it is elected. We have party primaries for the 7 St. Thomas/St. John seats and 7 St. Croix seats, where all the incumbents of that party are running directly against one another for one of those 7 party nominations. Then, we proceed with what appears to be unheard of elsewhere in the country: a jungle general election for multiple seats, in which the 7 St. Thomas/St. John and 7 St. Croix seats are awarded to the top 7 finishers on that island, regardless of party. So, assuming they made it through the primary, the 7 incumbents from St. Thomas/St. John and the 7 incumbents from St. Croix directly campaign against one another in the general election for one of the top 7 spots to retain their seat in the Legislature. In other words, regardless of shared political party and regardless of shared policy priorities, our 7 Senators from St. Thomas/St. John and 7 Senators from St. Croix are never actually colleagues with the Senators from their own district. They are perpetual political opponents, necessarily spending time worried about how failing to distinguish themselves from the other Senators from their district may be damaging to their ranking amongst incumbents in the eyes of voters or potentially even contemplating how best to shift a competitor's ranking lower. It turns what should be simple legislative work into an extension of their respective campaigns for re-election.

To be clear, this is not a problem with our Senators themselves but rather a problem with our election system for Senators from St. Thomas/St. John and from St. Croix. In a jurisdiction where the policy differences between political parties are so narrow and where the policy goals of Senators from the same district are so often quite similar, this election system virtually compels Senators to create artificial distinctions or do something over the top to stand out that is unrelated to the actual policies and legislation they genuinely support, just to ensure they finish in the top 7 in the next jungle general election. For instance, passing a Bill that all 7 Senators from St. Thomas/St. John or from St. Croix support and campaigned upon will not move the needle in terms of their rankings in the next election where all 7 are running against each other. This system turns shared legislative achievements into moot points for purposes of showing their voters they deserve to be re-elected, which is terrible. This need to stand out and difficulty in doing so also encourages over the top performative efforts to move the needle at hearings unrelated to any substantive distinction in policy between the Senators.

Moreover, this system strongly encourages the voters themselves to prioritize a smaller number of Senators and simply fail to cast several of their votes to ensure their vote for their favorite candidate is not diluted by support for less favored candidates. The common practice of "bullet voting" – casting just a few (or even just one) of our seven votes for Senator for St. Thomas/St. John or for St. Croix – artificially encourages us to disenfranchise ourselves. It encourages Senators to focus on attracting bullet voters (and to persuade their supporters to cast bullet votes for them) to ensure they have a solid base of exclusive support to make it into the top 7. And how can they best attract bullet voters? Often, by doing over the top performative things to stand out unrelated to actual policies and legislation. And if they are elected with bullet voters, how do they work with another Senator from their district without running the risk of one of their bullet voters adding a second "bullet" for that other Senator, reducing the benefit and effectiveness of that voter for the first Senator?

This system also discourages Senators from St. Thomas/St. John and from St. Croix from even joining a political party to avoid two rounds of jungle elections by registering as an independent. Political parties can be a useful way to organize people with shared policy goals – but not if it functions as an unnecessary obstacle to getting on a general election ballot, where you would be forced to campaign and run against members of that same party in any event.

So what is my Plan for Critical Systemic Change to address this problem with the Legislature? Numbered seats (rather than sub-districting). Each sitting Senator from St. Thomas/St. John and each sitting Senator from St. Croix would be assigned a number from one to seven (perhaps in alphabetical order), after which those will be the permanent numbers for those seats. Challengers within the same party would run for a specific numbered seat in the primary. Independent challengers at the general election would run for a specific numbered seat. All incumbent Senators would at that point no longer need to concern themselves with the sort of campaign considerations that currently obstruct efficiency in the Legislature because none of them would be running against one another in the next election, whether at the primary or general election. They would finally be colleagues with all 14 of their fellow Senators. Moreover, voters would no longer need to cast bullet votes to nudge their favorite candidates higher in the rankings. For the first time in my lifetime, voters could feel free to cast all seven of their district votes without fear that they would be diluting their support for their favorite candidate by doing so.

Why not sub-districting? While sub-districting is preferable in the long term to address regional concerns and representation and can certainly be implemented eventually, its enactment presents serious obstacles that do not apply to numbered seats. First and foremost, sub-districting cannot be implemented without the U.S. Congress enacting it or approving it. See *Moolenaar v. Todman*, 317 F.Supp. 226, 233 (D.V.I. 1970) (“I hold that § 5(b) of the Organic Act does not empower the Virgin Islands Legislature to redistrict.”) Whereas implementing numbered seats constitutes no more than exercising the Legislature’s apportionment power, which Congress explicitly granted. See 48 U.S. Code § 1571(b) (“The apportionment of the legislature shall be as provided by the laws of the Virgin Islands.”) In addition, it is the incumbent Senators who would need to vote to push sub-districting with the U.S. Congress, and the sub-districting process would likely be skewed by incumbents trying to ensure the subdistricts were not carved out in a way that made them have to defeat a fellow incumbent to retain their seat while other Senators get to face only new challengers, which could lead to gerrymandering. As eliminating our top 7 primaries and jungle general election is the critical problem that needs to be eliminated to efficiently enact any other critical systemic change, numbered seats is the best and fastest option to get us over that hump. We can switch to sub-districting in the future with the assistance of Congress, but we need our Senators to be colleagues now, and the Legislature and Governor could literally do that today without any further action by Congress.

Senators and Governor: Agreed?

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