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V.I. Supreme Court Strikes Down Law Granting Trial Priority to Seniors and Terminally Ill

Chief Justice Hodge rules the 2021 law unconstitutional, citing separation of powers and procedural overreach by the legislature

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In early August, the V.I. Supreme Court ruled that a 2021 law, which gave senior citizens and terminally ill people priority in getting their civil suits heard, was unconstitutional.?

The court was hearing an appeal from Limetree Bay Terminals ([now doing business as Ocean Point Terminals](#)), which contested an order from the Superior Court granting trial preference for litigation brought by Vincent Liger, an elderly man who was seeking damages for the contamination of his cistern following the [flaring incident](#) of 2021 that sent oil droplets billowing west of St. Croix. On January 30, 2023, Mr. Liger requested preferential treatment from the court under Title 5, Section 31(b) of the Virgin Islands Code, a provision that permits terminally ill

seniors to expedite civil lawsuits.

After the court granted Mr. Liger's motion, Ocean Point Terminals appealed the ruling, arguing that the language of Act 8468 infringed on the authority of individual judges and the judicial branch as a whole to manage their own affairs. Ocean Point also claimed that the law, as written, violates equal protection guarantees.?

The Government of the Virgin Islands agreed with Ocean Point, filing an amicus curiae brief supporting the argument that the mandatory preference law is unconstitutional, on both grounds. Ocean Point is now seeking legal fees from the elderly man totaling roughly \$44,000. ?

In authoring his judgment, Chief Justice Rhys Hodge first noted the established separation of powers between the executive, legislative, and judicial branches of government. He reminded that “the Revised Organic Act itself places structural limits on the authority of the Legislature to make law,” and cited case law that holds that for procedural rules, “conflicts between rules promulgated by the judiciary and rules promulgated by the legislature are resolved in favor of the judiciary.”

The Chief Justice found the mandatory preference statute to be procedural in nature, rather than substantive as the V.I. Superior Court ruled. Justice Hodge noted that the lower court cited no legal authority to support its ruling, but merely followed the decision of a Superior Court judge in a previous matter. In that matter, also, no legal argument was made or analyzed. Justice Hodge found that the court had just accepted an unopposed contention from the plaintiffs. In neither Superior Court case was the constitutionality of the law examined, he determined.?

Mr. Liger’s argument in favor of constitutionality was flawed, Justice Hodge said, because it relied on a ruling from a California court. However, “the California Supreme Court has interpreted the California Constitution as providing considerably narrower separation of power guarantees than the United States Constitution or most state constitutions, to the point where the distinction between substance and procedure is largely irrelevant,” the Chief Justice explained. As a result, the Constitution of California is not meant to provide balance in the powers exercised in each branch of government. Even then, a law attempting to give preference to criminal cases over civil cases was not enforced by the California Supreme Court, because the court found that the California Legislature could not impose such an “absolute or inflexible” rule onto the judiciary, as it would abrogate the discretion of a trial court.

Even when the mandatory preference statute was working its way through the legislative process, lawmakers acknowledged that the measure would be procedural. Chief Justice Hodge quotes Senator Milton Potter as saying that “the judicial has the ultimate say as to how it chooses to manage its docket.” He hoped, however, that the legislation would have sent a message of concern over the [hefty backlog in cases](#) before the courts.

?Notwithstanding the receipt of that message, the legislature’s attempt to deal with the issue by sending senior Virgin Islanders to the front of the queue was fatally flawed, Justice Hodge ultimately found. As such, “we declare the mandatory preference, section 319(b)(1) statute unconstitutional and void as a matter of Virgin Islands law,” the Chief Justice concluded.