

The Virgin Islands Consortium

Attorney Who Helped Draft Reapportionment Measure Has Written A Legal Opinion For The Senate In Opposition To It

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It appears that the reapportionment petition that was signed by nearly 5,000 Virgin Islanders to be placed on the general election ballot, is coming under fire from at least of the persons who helped draft it -- Attorney Yvonne Tharpes, who has opined that the Senate should not adopt the measure.

"This analysis will conclude that because of constitutional defects and other legal deficiencies in the proposal, the Legislature should not accept the initiative," Ms. Tharpes wrote in the legal opinion, seen [here](#).

The petition that has now won approval of residents was drafted and approved in part by Ms. Tharpes back in April during an hourslong hearing of the Titling Board, which includes Ms. Tharpes, Attorney General Claude Walker, and Supervisor of Elections Caroline Fawkes. But Tharpes is the Legislature's legal counsel, and Mr. Walker said in a statement issued to The Consortium on Wednesday, that she is "conflicted out" from opining on the matter.

[\[Watch: Titling Board meeting with local retirees group with agenda to amend VI code for the reapportionment of the Legislature.\]](#)

At the first hearing held Wednesday on the reapportionment measure, senators voiced their opposition, questioning how it would be implemented. One senator, Neville James, told The Consortium via text message Thursday that the petition was unconstitutional, and therefore even if it were to be supported by local lawmakers, it would not be implemented -- an opinion rejected by reapportionment proponent Mario Moorhead.

Mr. Walker, a member of the Titling Board, said he would not pull his support for the initiative.

"I am not backing away from the Titling board's vote to allow the St. Croix Retirees to go forward with their ballot initiative because this is a pure exercise in American democracy," the attorney general said. "Attorney Tharpes is a member of the board and she voted in favor of the measure that night along with Fawkes and me. Therefore, she is conflicted out, in my opinion, from now opining on this matter for the Legislature. How can you vote for something and then opine on the legality of it afterwards? She could have voted against it or abstained. All of the issues that she raised in her opinion were addressed during the all-night hearing that we had."

Proponents of the initiative see the new arrangement imitating the U.S. setup whereby at-large senators would operate like U.S. Congress senators representing the entire territory, and district senators operating more like those elected to the U.S. House of Representatives — through population and focusing on local issues.

The question that was approved to be asked in April by the Titling Board and placed on the ballot starts by explaining the proposal: "Title 2, Chapter 6 of Virgin Islands Code entitled Apportionment of the Legislature is amended to read as follows: There are five Legislative Districts with 9 district senators and 6 at-large senators: District of St. Croix East shall have two senators, District of St. Croix West Shall have two senators, District of St. Thomas East shall have two senators, District of St. Thomas West Shall have two senators, District of St. John shall have one senator, voted on by the qualified electors of the respective districts. The proposal further states that there shall be six at-large senators, "three shall be residents of St. Croix and three shall be residents of St. Thomas, voted on by the qualified electors of the Virgin Islands Code."

The question then asks: "Shall this proposal become law?"

For senators who raised issues with the current measure, Mr. Walker said, "Specific issues such as electoral boundaries are only drawn if it passes."

In her legal opinion, Ms. Tharpes concluded by stating that "unless the Legislature enacts a measure that does not redistrict, there would not be sufficient time to enact a

redistricting or reapportionment plan that would withstand judicial scrutiny." She said no lines or boundaries had been drawn establishing the districts, and that the separate St. John District with its small population compared to the other four districts would have a greater deviation of 10 percent than allowable. The attorney also said that as drafted, the initiative repeals residency requirements for senators, and also fails to amend the election code to conform the ballot to multi-member districts.

For Mr. Walker, though, while the issues Ms. Tharpes raised may hold weight, he said democracy is an experiment, and that the people's voice should be heard. He also maintained that the issues could be worked out following the people's decision to approve or reject.

"Democracy is not perfect, and so, the board was not trying to achieve perfection. Rather, the board was seeking to take into account all of the concerns raised, and then ultimately allow this experiment in democracy to be presented to the Legislature for its decision as the Revised Organic Act requires," Mr. Walker concluded.