

The Virgin Islands Consortium

V.I. Bar Asks Supreme Court to End 10-Year Terms and Give Territorial Federal Judges Life-Tenure Protections

The V.I. Bar says territorial federal judges should not have to rely on future presidential renomination to stay on the bench, asking the Supreme Court to recognize the same life-tenure protections enjoyed by federal judges across all 50 states today.

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The District Court of the Virgin Islands on St. Croix, where federal judges serve 10-year terms, a tenure structure the V.I. Bar is challenging before the U.S. Supreme Court as a threat to judicial independence. By. V.I. CONSORTIUM.

The Virgin Islands Bar Association is asking the U.S. Supreme Court to confront a question with direct implications for the territory: whether judges who exercise federal judicial power should be limited to 10-year terms instead of receiving the life-tenure protections given to federal district judges in the states.

The argument was raised in a friend-of-the-court brief filed by the V.I. Bar in *Department of the Air Force v. Prutehi Guahan*, a Guam case scheduled for Supreme Court arguments on October 7. Although the underlying dispute involves Guam and federal environmental law, the Bar says the case presents a broader constitutional problem that also reaches the District Court of the Virgin Islands.

Judges of the District Court of the Virgin Islands are nominated by the president and confirmed by the U.S. Senate, and they preside over federal criminal prosecutions, constitutional disputes and major civil cases involving federal law. Unlike federal district judges in the states, however, they do not receive life tenure. Federal law gives V.I. district judges 10-year terms, after which they may remain temporarily until successors are appointed and confirmed.

The V.I. Bar argues that arrangement can undermine judicial independence because a judge nearing the end of a term may know that continued service could depend on another presidential nomination and Senate confirmation. The Bar is not accusing territorial judges of changing decisions to improve their chances of remaining on the bench. Instead, it argues that the structure creates the possibility, or at least the appearance, of political pressure that Article III of the Constitution was designed to prevent.

Article III judges generally serve for life during "good Behavior" and cannot have their salaries reduced while in office. Those protections are intended to allow judges to rule against presidents, Congress, federal agencies or other powerful interests without worrying that an unpopular decision could cost them their positions.

Territorial federal courts have historically been treated differently. Congress created courts in the territories under its broader authority to govern U.S. territories, and the Supreme Court has long allowed their judges to serve fixed terms rather than receive Article III life tenure.

The V.I. Bar argues, however, that the constitutional analysis should focus on the kind of judicial power being exercised. In Guam, it says, the federal district court has evolved from a court that once handled both federal and local territorial matters into one functioning primarily as a federal court. According to the Bar, a court exercising the judicial power of the United States should have judges protected by Article III, regardless of its location in a territory.

The brief specifically connects that argument to the Virgin Islands. The Bar tells the Supreme Court that the statutory language establishing fixed terms for judges in Guam is "virtually identical" to provisions governing the District Court of the Virgin Islands and the Northern Mariana Islands. It argues that the fixed-term provisions could be severed from those laws if the Supreme Court agrees that they conflict with Article III.

The Bar also points to the experience of former District Court Judge Thomas K. Moore, who sought another term but was not reappointed after his tenure expired. The Bar does not claim that Moore lost his position because of any particular ruling, but cites his earlier concern that speculation linking judicial decisions to reappointment could itself damage public confidence in the court's independence.

There is significant precedent on the other side. In 2019, the U.S. Court of Appeals for the Third Circuit rejected a constitutional challenge to the structure of the District Court of the Virgin Islands in *United States v. Ayala*. The court upheld Congress's authority to create territorial courts whose judges do not receive Article III life tenure and said any decision to convert the V.I. court into an Article III court was ultimately one for Congress.

The V.I. Bar is now asking the Supreme Court to approach the question differently: not simply by asking whether Congress has authority to establish territorial courts, but whether judges exercising federal judicial power can constitutionally remain subject to renewable fixed terms.

Even if the Supreme Court accepts that argument in the Guam case, it would not necessarily eliminate 10-year judicial terms in the Virgin Islands immediately. The jurisdictions of the two territorial courts are not identical, and further litigation or congressional action could be required. The Supreme Court could also decide the Guam case without addressing the constitutional issue raised by the V.I. Bar at all.

Still, the filing places the structure of the District Court of the Virgin Islands directly before the nation's highest court. At its core, the Bar's position is that judges entrusted with deciding federal cases should have the same protection from political pressure whether they sit in Florida, New York, Guam or the U.S. Virgin Islands.