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Implementing the Constitutional Convention Voters Approved in 2020

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No democratic task is more important for a people than drafting its constitution, a document that is the foundation of any modern democracy. But the way USVI's Legislature and Governor drafted USVI's 6th constitutional convention enabling act, [signed into law](#) by the Governor on Jan. 19, 2023, suggests contempt for both the people and the constitution drafting process. A convention's enabling act shouldn't be a power grab by the Legislature; it should empower the people. It also shouldn't be passed in secret and riddled with careless errors.

The process for a U.S. territory to acquire its own territorial constitution entails three public votes: 1) whether to call a convention (USVI voters [overwhelmingly approved](#) a call on Nov. 3, 2020), 2) to elect delegates to a convention (currently scheduled for Nov. 4, 2024), and 3) to ratify the convention's proposed constitutional changes. Congress also needs to approve any proposed

constitution.

By the Legislature's [own count](#), USVI has convened five "constitutional conventions" between 1965 and 2012. None won approval for its proposed constitution. The Legislature hopes its 6th attempt will finally succeed.

The Legislature has marketed all six attempts as efforts to empower USVI's people. Currently, USVI's fundamental law, called an "organic act," is controlled by Congress. The Legislature wants to transfer the power to amend this fundamental law from Congress to USVI.

The problem is that from the Legislature's standpoint, empowering itself and the people are identical. But they are not: the Legislature has always prioritized empowering itself and its special interest allies over USVI's people. This behavior, along with gross sloppiness born of excessive secrecy, largely explains the failure of its previous five attempts to pass a constitution and why, if the Legislature persists in its power grab, I hope its current attempt will also fail.

As background, consider some basic constitutional theory: Congress requires that all new constitutions proposed by U.S. territories be proposed by an independently elected convention and approved by not only Congress but territorial voters. This tradition began in late 1770s Massachusetts when voters expressed great distrust of their Legislature proposing and then ratifying a new state constitution. They contended that the Legislature would have a blatant conflict of interest in proposing and approving its own constitutional powers—a then-popular definition of "legislative tyranny." The convention process was to solve that conflict-of-interest problem.

The catch is that Congress leaves the implementation details to local legislatures, which can use that discretion to try to enable an independent convention in form but not substance. Alas, legislatures can get away with such sleight-of-hand if the public does not pay attention until after the enabling act is a fait accompli.

For USVI's [first two](#) conventions, the Legislature exercised control largely by ensuring that fifteen of the thirty-three convention delegates were incumbent legislators and by requiring a 2/3 majority for the convention to pass a proposal, which gave the legislator-delegates effective veto power over any proposal coming out of the convention.

For the third through fifth enabling acts, the Legislature was granted control of the convention process in more subtle ways. The [sixth act](#) carries on that tradition.

Based on the belief that Congress wouldn't reject a fundamental law it created, the Legislature's [latest scheme](#) is to get a convention to propose Congress's existing organic act for USVI along with an amendment provision giving the Legislature effective control over future amendments. After Congress and the voters approve that constitution, the Legislature would then convene a constitutional revision commission under its tight control to propose amendments for its approval before submitting them to the people for their approval. In other words, contrary to a convention's democratic function, the Legislature would retain proposal power over the organic act's rewrite.

The enabling act the Legislature passed on Dec. 29, 2022 is rife with provisions granting it excessive control over the convention process. Among them:

1. Forcing the convention to use the Legislature's and Governor's legal staff as counsel.
2. Making delegates beg the Legislature for funds to run a convention, including paying for non-legislature staff, for more than a minimal period.

3. Spending \$150,000, half the convention's total budget, on a PR campaign to win public ratification of the convention's proposed constitution.
4. Suppressing minority representation in delegate elections via a super-gerrymander, including huge multi-member districts designed to prevent fair representation.
5. Guaranteeing no loss of pay or position if government, but not private sector, candidates win.

If the Legislature were serious about creating a democratically accountable convention process, it would have conducted a genuinely open debate about the process, including inviting expert testifiers to discuss the convention's independence from the Legislature. Instead, its invited experts avoided such issues and legislators debated them among themselves in secret. The Legislature's unanimous passage of the enabling act after 11:00 pm on Dec. 29, 2022, 26 months after voters approved calling a convention and less than two hours before the session adjourned, illustrates its penchant for secrecy.

This secrecy has a cost—including sloppy and embarrassing errors that could have been avoided if more public eyes had been allowed to read the legislation prior to its passage and signing by the Governor. For example, the Legislature was forced to change the enabling act's original delegate election date because it had already passed by Dec. 29, 2022. But it then forgot to change the subsequent dates in the act. The Governor blames the Legislature for the errors.

Submitted on Thursday by: J.H. Snider. Mr. Snider edits the [USVI Constitutional Convention Clearinghouse](#) and the [U.S. State Constitutional Convention Clearinghouse](#).