IN THE VIRGIN ISLANDS BOARD OF ELECTIONS

RESPONSE OF CHAIRMAN JOHN CANEGATA AND SECRETARY MAX SCHANFARBER TO PETITION FROM GORDON ACKLEY, TODD HECHT, ANTOINETTE GUMBS-HECHT, AND RANDOLPH MAYNARD DATED JUNE 4, 2020

"It is a good thing to follow the *first law of holes; if you are in one, stop digging."*
Denis Healey.

On June 4, 2020, Gordon Ackley, Todd Hecht, Antoinette Gumbs-Hecht, and Randolph Maynard submitted a "First Amended Complaint and Petition" (the "petition") to the members of the Board of Elections advancing several frivolous arguments that have been soundly rejected by the Superior Court. On June 2, 2020 the Honorable Kathleen Mackay denied Ackley and the Hechts' motion for an injunction against the Board of Elections, Chairman Canegata, and Secretary Schanfarber. On June 4, 2020, the Court issued a blistering opinion explaining its reasoning. In that opinion (attached as Exhibit 1), the Court found:

1. There is simply no evidence to suggest that Chairman Canegata is not the legitimate Chairman of the Republican Party of the Virgin Islands. The Court emphasized that "Plaintiffs' claims that [Chairman Canegata and Secretary Schanfarber] have engaged in a conspiracy is not supported by the evidence." See page 20 of the opinion.
2. Ackley and the Hechts "do not have a reasonable probability of success on the merits" of their lawsuit. See Page 11.
3. Chairman Canegata has served as chairman of the VIGOP since 2012. See page 5.
4. The VIGOP conducted a valid caucus in 2016. See page 14.
5. The VIGOP approved valid, permanent caucus rules in 2018. See Page 5.
6. The "2020 Caucus Rules is identical to the 2018 Caucus Rules . . . which *were* duly voted on and approved by vote of the VIGOP party officers on January 26, 2018, and by the BOE on January 31, 2018. Nothing within the four corners of the 2018 Caucus Rules indicates an expiration date or sunset clause . . . **As such, the Court finds that the 2018 Caucus Rules are still valid**." See Page 15 (emphasis added).
7. Ackley and the Hechts "present inconsistent arguments," because they concede "that the VIGOP has the right to hold a caucus," but then "contradict [their own arguments]" by arguing that they must be installed via a mandatory primary election. See Page 11-12.
8. "One of Plaintiffs' claims is that Canegata and Schanfarber's attempts to mislead the BOE into cancelling the primary election is driven by Canegata and Schanfarber's failure to collect sufficient signatures to satisfy the BOE's requirements for a primary election. However, Canegata provided proof that he had collected more than 40 signatures in the District of St. Croix on a petition to run for state chair. This sum exceeds the minimum required of one district." See Page 13.

Ackley and the Hechts invite the Board of Elections to transform itself into an appeals court in order to relitigate issues already decided by the Court. The Board of Elections should decline that request. If Ackley and the Hechts disagree with the actions of Chairman Canegata, the proper way to resolve those issues is to bring those issues to the VIGOP's state committee so that committee can, if it deems appropriate, reverse the actions of the Chairman. Because Ackley and the Hechts lack any support on the state committee, they ask this Board to overrule the Court, the RNC, and the VIGOP and install them as the new leaders of the VIGOP. Having failed to raise these issues

before the state committee (the proper forum to challenge internal party rules), the challengers lack standing to raise them before the Board of Elections.[1]

The Board of Elections has approved these very rules on previous occasions. It should do so once again.

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Respectfully submitted,

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[1] 18 V.I.C. § 232 requires that the Board of Elections certify any and all methods the party wishes to use to select its internal officers. Obviously, the power to certify implies the power to not certify. This regime offends the Freedom of Association protections afforded by the First Amendment and, accordingly, is unconstitutional. *See*, e.g., *Price v. New York State Bd. of Elections*, 540 F.3d 101, 108 (2d Cir. 2008) ("it is well-established that a political party's associational rights are affected when the party's nomination process, and its mechanisms for selecting internal leaders, are disrupted by state action."); *LaRouche v. Fowler*, 152 F.3d 974, 996-97 (D.C. Cir. 1998) ("the Party's First Amendment rights extend not only to defining itself, but also to determining how to define itself. The Supreme Court made this point in both *Cousins* and *LaFollette* by upholding the Party's right to determine who could select its delegates, notwithstanding the states' views that a different process would be more appropriate.") (emphasis added). A decision by the Board of Elections to substitute its preferences regarding a caucus for that of the VIGOP could result in a challenge to the entire statutory regime in federal court.