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VIA FIRST CLASS MAIL & ELECTRONIC MAIL (caroline.fawkes@vi.gov)

Elections System of the Virgin Islands
Attn: Caroline F. Fawkes, Supervisor
P.O. Box 6038
St. Thomas, VI 00804

**RE: Qualifications of Brett M. McClafferty a/k/a Mac McClafferty for the
Legislature of the U.S. Virgin Islands**

Dear Supervisor Fawkes:

Our firm represents Brett M. McClafferty. I write regarding Mr. McClafferty's position on his compliance with the Revised Organic Act of the Virgin Islands, an Act passed by the U.S. Congress in Washington, D.C. on July 22, 1954, in connection with his bid for a seat in the legislature of the U.S. Virgin Islands.

As I believe you are aware, Mr. McClafferty's candidacy has received both local media and social media attention, in which various disputed claims have been asserted about his qualifications.

The Revised Organic Act, Section 6(b) provides that "[n]o person shall be eligible to be a member of the legislature who is not a citizen of the United States, who has not attained the age of twenty-five years, who is not a qualified voter in the Virgin Islands, who has not been a bona fide resident of the Virgin Islands for at least three years next preceding the date of his election, or who has been convicted of a felony or of a crime involving moral turpitude and has not received a pardon restoring his civil rights."

Mr. McClafferty is a natural born citizen of the United States, is thirty-eight years old, is a qualified voter in the Virgin Islands, and has been a bona fide resident of the Virgin Islands since February 2021. These facts are not in dispute.

The sole point of contention seems to be whether Mr. McClafferty has been convicted of a felony or of a crime involving moral turpitude and has not received a pardon restoring his civil rights.

Mr. McClafferty was indicted across various counties in the State of Ohio between 2014 and 2017, for crimes which ultimately related to alleged violations of the Ohio Consumer Sales Practices Act (“OCSPA”) and his operation of Mac Contracting, Inc. While some of those charges resulted in felony convictions, Mr. McClafferty brought three appeals (two in the Ohio Courts of Appeals, and one in the United States Court of Appeals for the Sixth Circuit) in which the judgments of the trial courts were reversed and remanded in each of the appeals.

The State of Ohio and Mr. McClafferty subsequently entered into a “global resolution” that resulted in Mr. McClafferty pleading guilty to several misdemeanor violations of the OCSPA in lieu of being tried or retried on the felony counts of the indictments.

First, misdemeanors are not felony convictions, and an individual does not forfeit his civil rights with a misdemeanor conviction. Furthermore, Mr. McClafferty submits that convictions arising from violations of the OCSPA do not rise to the level of “crimes of moral turpitude,” as they are criminal and civil penalties relating to the operation of a consumer-related business in the State of Ohio. Also, based on the NCIC report provided to the Office of the Governor when Mr. McClafferty was appointed to the Governor’s Advisory Council for the Office of Gun Violence Prevention, his record was suitable for his appointment. These facts alone should ensure Mr. McClafferty’s qualifications under the Revised Organic Act.

However, for the sake of discussion, even if Mr. McClafferty were convicted of felonies or crimes of moral turpitude in the State of Ohio, he may still be qualified under Section 6(b) of the Revised Organic Act for several independent reasons:

1. Ohio Revised Code § 2967.16 restores rights to felons, with limited and inapplicable exceptions, upon completion of their sentence (final release/parole), allowing them to vote, serve as jurors, and hold public office.¹ As such, under Ohio law, there is no need for a pardon to restore one’s civil rights because it happens automatically by operation of law in most cases, thus satisfying the “restoration of civil rights” language in Section 6(b) of The Revised Organic Act.
2. The Revised Organic Act is silent as to whether the disqualifying conviction must have occurred in the Virgin Islands, or whether a conviction in any other part of the world suffices. Due to the Virgin Islands’ semiautonomous status, and the fact that Section

¹ § 2967.16(C)(1) provides, in pertinent part:

- [T]he following prisoners or person shall be restored to the rights and privileges forfeited by a conviction:
- (a) A prisoner who has served the entire prison term that comprises or is part of the prisoner’s sentence and has not been placed under any post-release control sanctions;
 - (b) A prisoner who has been granted a final release or termination of post-release control by the adult parole authority pursuant to division (A) or (B) of this section;
 - (c) A person who has completed the period of a community control sanction or combination of community control sanctions, as defined in section 2929.01 of the Revised Code, that was imposed by the sentencing court.

6(b) does not include language expanding the convictions beyond the shores of the Virgin Islands, it is possible that the Revised Organic Act is intended to disqualify candidates convicted of felonies or crimes of moral turpitude in the Virgin Islands only, for which it has jurisdiction. Mr. McClafferty has never been convicted of any crime, whether felony or misdemeanor, in the Virgin Islands.

3. It is possible that Section 6(b) is unconstitutional and violates the equal protection clause of the Fourteenth Amendment. Under *Turner v. Fouche*, 396 U.S. 346 (1970), while there is no constitutional right to hold public office, “candidates for public office do have a federal constitutional right to be considered for public service without the burden of invidiously discriminatory disqualifications.” Candidates who have committed crimes and seek public office in the Virgin Islands are one group, but they are treated differently depending solely on which office they seek — territorial versus federal — with no meaningful difference in the underlying conduct or the public’s interest in their service. Those convicted of crimes who seek territorial office face permanent disqualification, while those convicted of any crime — including more serious federal felonies — face no disqualification from federal candidacy for the position of Delegate to Congress.

In light of the foregoing, Mr. McClafferty respectfully submits that he is qualified to run for office and serve in the legislature of the U.S. Virgin Islands, and attempts to disqualify him based on Section 6(b) of the Revised Organic Act lack merit.

I am, of course, available at your convenience should you have any questions or concerns regarding the foregoing.

Very truly yours,

/s/ *Bradley Lehman*

Bradley P. Lehman, Esq.

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