

**IN THE DISTRICT COURT OF THE VIRGIN ISLANDS  
DIVISION OF SAINT THOMAS AND SAINT JOHN**

VIRGIN ISLANDS UNITY DAY GROUP, INC.	)	
	)	CIVIL NO. 08-047
Plaintiff,	)	
	)	ACTION FOR VIOLATION OF
v.	)	42 U.S.C. § 1983; VIOLATION
	)	OF REVISED ORGANIC ACT;
GOVERNMENT OF THE VIRGIN ISLANDS,	)	TEMPORARY AND PERMANENT
ROY MARTIN, in his official capacity as	)	INJUNCTIVE RELIEF
Tax Assessor,	)	
	)	
Defendants.	)	
	)	
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**REPLY TO OPPOSITION TO MOTION FOR  
PRELIMINARY INJUNCTION**

Rather than repeat arguments previously made, Plaintiff incorporates herein by reference its responses to Defendants' Motion to Dismiss. The instant brief will confine itself to consideration of the new arguments made in Defendants' Opposition to the Motion for Preliminary Injunction.

**OBJECTION TO SPECIAL MASTER'S REPORT**

Preliminarily, Plaintiff objects to any consideration of the report of Joe Hunt attached to the Government's Opposition. This document has not been authenticated, nor has any foundation been laid for its admissibility. It is unsworn, and the statements contained in the letter constitute hearsay without any exception. Beyond that, the letter has never been offered or received in evidence in this or any other action. It is completely improper for the Government to simply attach a letter without the least attempt to lay a foundation for its admissibility. This is particularly true in a case where Plaintiff has had no opportunity to cross-examine Mr. Hunt regarding the conclusory statements contained in his correspondence. Additionally, the sworn testimony of Mr. Robert Gloudemans, the author of the very standards referenced in Mr. Hunt's letter, directly contradicts those conclusory

statements regarding compliance with IAAO standards.

**THE INSTANT MOTION IS BASED ON 5 V.I.C. § 80, AND  
THE REQUIREMENTS OF FRCP RULE 23 ARE INAPPLICABLE**

The Government is simply wrong when it argues that this case is a class action subject to the requirements of Rule 23 of the Federal Rules of Civil Procedure. The instant motion is based on 5 V.I.C. § 80, which provides that “A taxpayer may maintain an action to restrain illegal or unauthorized acts by a territorial officer or employee, or the wrongful disbursement of territorial funds.”

All that is required to state a claim under § 80 is that the Plaintiff be a taxpayer. *Smith v. Government of the Virgin Islands*, 329 F.2d 131 (3d Cir. 1964). In *Smith*, the Third Circuit held that taxpayers may bring a suit on behalf of themselves and all other taxpayers of the Virgin Islands to declare illegal government actions. And there is no requirement that the plaintiff demonstrate particularized injury. *Donastorg v. Virgin Islands*, 45 V.I. 259 (Terr.Ct. 2003). And in *Smith, supra*, the Third Circuit noted:

“the alleged minuteness of the amount of the present taxpayers’ interests may not be urged as a ground for denying them standing to sue. For the statute does not impose upon them any requirement as to the minimum amount of their taxes, either in absolute terms or in relation to the amount of funds or property involved in the suit. It merely requires a showing that they are territorial taxpayers. Having made such a showing the plaintiffs are entitled under the statute to sue to restrain illegal or unauthorized acts by a territorial officer or employee or the wrongful disbursement of territorial funds or alienation of territorial property. Moreover the statute does not require that the alleged illegal act which is sought to be restrained involves public funds or property to which the plaintiffs’ tax payments have contributed, or even that the alleged illegal act involves the public funds or property at all. For us to hold otherwise would be to put an unwarranted gloss upon the statute and to defeat pro tanto its salutary purpose.”

In short, actions under 5 V.I.C. § 80 are not subject to the requirements of Rule 23 and the

Government's objection on that basis is groundless.

**PLAINTIFF IS LIKELY TO PREVAIL  
ON THE MERITS OF ITS CLAIM**

The Government offers nothing to support its argument that Plaintiff is unlikely to prevail other than the unsworn, unauthenticated, conclusory hearsay statement of Mr. Joe Hunt. Plaintiff has previously objected to the consideration of Mr. Hunt's report and again renews that objection.

On the other hand, Plaintiff has supported its Motion with the authenticated, sworn testimony of the author of the very IAAO standards at issue in this litigation - Mr. Robert Gloudemans. Mr. Gloudemans supports his testimony and opinions with specific examples of the failure of the new assessment system to generate values that comply with IAAO standards. Perhaps the most glaring example is the use of the Government's own sales and assessed value comparison to conduct a sales ratio study. According to Mr. Gloudemans, that ratio study reveals that high end properties on St. John are being systematically under-assessed while low end properties are being systematically over-assessed. This single fact dramatically demonstrates the arbitrary and capricious nature of the assessment system.

Plaintiff has produced sufficient evidence from the author of the very standards at issue here that the assessments do not comply with IAAO standards. On the other hand, the Defendants continue to blindly rely on inadmissible and unsworn conclusory statements that do not even come close to demonstrating that Defendants have even a slim chance of prevailing on the merits of their claim.

**PLAINTIFF IS NOT REQUIRED TO DEMONSTRATE  
IRREPARABLE HARM TO BE ENTITLED TO  
PRELIMINARY INJUNCTIVE RELIEF**

The Third Circuit has previously held that a party need not show inadequacy of a legal remedy, including irreparable harm, where the harm is the violation of a statute. *Government of the Virgin Islands v. Virgin Islands Paving, Inc.*, 714 F.2d 283 (3d Cir. 1983). See also *SEPTA v. Pa. PUC*, 210 F.Supp.2d 689 (E.D.Pa. 2002) (finding “convincing the logic of the cases applying a relaxed standard for issuing injunctions upon a showing of statutory violations.”).

See also *Northeast Women's Ctr., Inc. v. McMonagle*, 665 F. Supp. 1147 (E.D. Pa. 1987) (noting that irreparable harm is a component of adequacy of the legal remedy and stating “the legal remedy is inadequate if the plaintiff's injury is a continuing one, where the best available remedy would relegate the plaintiff to filing a separate claim for damages each time it is injured anew”), *aff'd in part and remanded*, 868 F.2d 1342 (3d Cir. 1987).

In *Berne Corp. v. Gov't of the Virgin Islands*, 262 F.Supp.2d 540 (D.V.I. 2003), Judge Moore made a finding that is directly on point:

“I also find that plaintiffs will suffer a continuing harm absent an injunction because the Tax Assessor will not even acknowledge that his present system of assessment does not produce credible and reliable appraisals of the actual value of real property. Without an injunction, Martin will continue to illegally assess plaintiffs' properties and the Government will continue to send out excessive and unreliable bills based on those illegal assessments, requiring plaintiffs to file new suits to vindicate their federal right.”

Finally, in a footnote the Government suggests that the instant Motion may not be ripe for adjudication because this Court has issued an Order requiring the Government rescind the 2006 tax bills. Of course, the Government ignores the fact that it *did* send out those bills, and it has taken the position in the *Berne* litigation that it has every right to do so. While a preliminary injunction will not issue when the threatened harm is merely speculative (*Adams v. Freedom Forge Corp.*, 204 F.3d 275 (3d Cir. 1999)), injunctive relief is properly granted when the threat is more substantial. In this

case the Government has already carried through on its threat and has ignored a court order in doing so. The Government has also loudly touted its intention to send out tax bills at the earliest possible opportunity. Members of the Plaintiff organization have already received impact notices informing them of the amounts the Government intends to bill them for taxes. In short, the Government's actions go well beyond the planning stage, well beyond the threatening stage, and into the realization stage. In short, this matter is ripe for the issuance of injunctive relief.

### **CONCLUSION**

For the foregoing reasons, and each of them, Plaintiff respectfully requests that the Court set this matter down for an evidentiary hearing at the earliest opportunity and issue the injunctive relief prayed for.

DATED: October 10, 2008

Respectfully Submitted,

/s/ James M. Derr  
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### **CERTIFICATE OF SERVICE**

I certify that on this 10<sup>th</sup> day of October, 2008, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to:

Carol Thomas-Jacobs, Esq.