

November 3, 2014

U.S. Department of Justice
Civil Rights Division
950 Pennsylvania Avenue, NW
Washington D.C. 20530

Attn: Voting Section

U.S. Department of Justice
Criminal Division
950 Pennsylvania Avenue, NW
Washington D.C. 20530

Attn: Public Integrity Section

Re: U.S. Virgin Islands Elections of November 4, 2014

Dear Sirs:

On Tuesday, November 4th, the U.S. Virgin Islands will hold its election for several elected positions, including a new governor, a congressperson, local senators (for a unicameral system), and several other local board members.

Each election year in the U.S. Virgin Islands there are allegations of election fraud, disenfranchisement, and lost ballots, among other claims. However, over the course of the last two weeks, several events related to the voting process have caused the people of the U.S. Virgin Islands great concern about the integrity of the upcoming election. I also harbor these great concerns, not only as a citizen, but also as a candidate for the Federal position of the U.S. Virgin Islands Delegate to the House of Representatives. The events described below cause me great concern not only because I believe they erode voter confidence in the system, but also because I believe that they create the possibility of widespread disenfranchisement of voters, potential tampering with voters' intended choice of candidates and violate the Help America Vote Act of 2002 ("HAVA").

By way of background, in 2013 the U.S. Virgin Islands Board of Elections (the "Board") purchased new voting machines, the DS200, a precinct-based, voter activated paper ballot counter and vote tabulator, which were used by voters for the first time in the August 2014 primary election. Under this system, individual voters enter a private booth to fill out their individual ballots and then feed their ballots into a vote tally machine. The vote tally machine tallies the votes and then informs voters if they have successfully completed the process of voting for each race. If the voter has under voted or over voted the machine will allow such voter to correct its ballot or accept the ballot as cast. When the polls close the DS200 prints out the voter logs so that election officials can have a paper tally. In addition, the DS200 captures digitized images of all ballots

scanned. This allows write-in votes and problematic ballot markings to be processed using the digitized images so that ***once ballots are scanned they need not be handled except in the event of a recount or an audit.***

On October 27, 2014, the USVI Joint Board of Elections (“Joint Board”) met and issued a mandate that voters would be denied the ability to scan their ballots into the DS200 due to an alleged “programming defect” inherent in the DS200. The alleged “programming defect” arises as a result of the U.S. Virgin Islands statute, which requires that U.S. Virgin Islands ballots contain a straight party ticket option for voters to utilize. The Joint Board has alleged that there are irregularities in the tally process regarding party symbol voting and determined that voters may not feed their ballots into the tally machine themselves, but rather, voters would place their ballots into a box. Once the polls closed, the ballots would be sorted by Board workers into three segments:

1. Ballots upon which an individual voter manually selected candidates in each category for which they were eligible to cast a vote;
2. Ballots upon which an individual voter utilized a straight party ticket option; and
3. Ballots upon which an individual voter utilized a straight party ticket option, but then manually selected a candidate from another party in one of the races.

Once the ballots are separated out as noted above, Board workers will scan the ballots on which all choices were manually selected by the voter and straight party ticket ballots into the DS200 machine. The ballots upon which an individual voter utilized a straight party ticket option, but then manually selected a candidate from another party in one of the races will be further scrutinized by the Board workers. According to the Joint Board, the votes cast for a non-party candidate on an otherwise straight party ticket would result in that portion of the ballot being deemed spoiled by the Board and the vote not tallied for purposes of the election.

By way of example, and utilizing the attached sample ballot, assume Voter A enters the private booth and selects the Democratic Straight Party Ticket option on the paper ballot. Voter A, however, wishes to vote for the Republican candidate for Delegate, Vince Danet, and manually fills in the circle next to Danet’s name at the top of the 3rd column of the ballot. According to the testimony of Dr. Tonjia Coverdale and the manufacturer of the DS200 machines, the DS200 would tally votes for the Democratic candidates in all of the races and would tally a vote for Vince Danet in the delegate race, a process that should alleviate any of the Joint Board’s concerns of over voting. Instead, as discussed above, the Joint Board has decided to separate such ballot and deem the vote for Vince Danet as spoiled thus nullifying the Voter A’s vote in that race.

On Thursday October 30, 2014, gubernatorial candidate Kenneth Mapp and concerned voter Janelle Sauraw filed a complaint in the Superior Court of the Virgin Islands

seeking injunctive relief and asking the court to compel the Board to allow voters to feed their ballots into the tally machine so that there would not be any break in the chain of custody of the ballot from the voter to the tally machine, and preserving the ability of voters to make corrections if there were errors in their tabulation of votes. This complaint was dismissed with prejudice by Superior Court Judge Kathleen Mackay on the grounds that "Virgin Islands law does not mandate that a voter have an opportunity to correct and over vote before casting his or her ballot" and that the "DS200 discerns voter intent contrary to law." The matter is now being appealed to the Supreme Court of the Virgin Islands. See Exhibit C.

I believe the decision of the Superior Court is concerning in two respects. First, the handling of all ballots by the Board of Election employees gives rise to concerns of spoiling of valid ballots, malfeasance of election officials and ballot box tampering.

Second, I believe that the position taken by the Court is contrary to the federal statutory provisions of HAVA. In particular, Title III of HAVA, which is applicable to federal elections (such as the election of the Delegate to the House of Representatives which is being decided this election) provides that every machine used to vote in a federal election must allow the voter to inspect the ballot before he or she casts it, allow the voter an opportunity to change the ballot before casting it, notify the voter if he or she has voted for more than one candidate for a particular office, inform the voter of the effect of voting for more than one candidate, and provide the voter who has voted for two candidates with the opportunity to change his or her vote.¹ Judge Mackay relied on the fact that Virgin Islands law does not mandate a voter have an opportunity to correct an over vote, but ignored the fact that HAVA requires just that in a federal election.

As the current Democratic Nominee for the Congressional seat, a leader of my community, as well as a sworn officer of the U.S. Virgin Islands courts, I have an obligation to ensure that electoral process in the U.S. Virgin Islands is fair and democratic. I am extremely concerned that the process agreed to by the Board will not only lead to arbitrary decisions by the Board as to which votes will be counted, but will also cause a number of ballots not to be counted at all, and ultimately will keep voters from coming to the polls on November 4th. Without Federal monitors or intervention, we may not in fact have a certified election this term.

I am imploring that your office send monitors for this election and assist in immediately revamping our system.

Sincerely,

¹ See HAVA §301, 116 Stat. at 1704 (codified at 42 U.S.C. 15481)

Stacey Plaskett,
Democratic Nominee for U.S. Virgin Islands Delegate to the House of Representatives