

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DISTRICT OF ST. THOMAS & ST. JOHN**

GOVERNMENT OF THE VIRGIN ISLANDS,

Plaintiff,

v.

**ARTURO WATLINGTON, IN HIS CAPACITY
AS THE CHAIRMAN OF THE BOARD OF
ELECTIONS, AND THE BOARD OF ELECTIONS,**

Defendants.

)
)
)
)
) **CIVIL No. ST-18-CV-**
)
) **ACTION FOR**
) **DECLARATORY**
) **JUDGMENT AND**
) **INJUNCTIVE RELIEF**
)
)
)

**EMERGENCY MOTION FOR TEMPORARY
RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

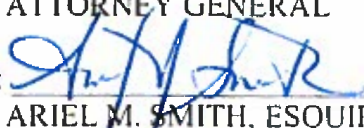
COMES NOW, the Plaintiff, Government of the Virgin Islands by and through its counsel, and hereby moves this Court pursuant to V.I. R. Civ, P. 65 for a Temporary Restraining Order and Preliminary Injunction permanently restraining and enjoining Defendant Arturo Watlington, in his capacity as the Chairman of the Board of Elections and the Board of Elections from engaging in conduct that violates 18 V.I.C. § 94(c). The basis for this motion is fully set forth in the memorandum filed herewith. For the reasons set forth therein, it is respectfully requested that the relief sought be granted.

RESPECTFULLY SUBMITTED,

CLAUDE EARL WALKER, ESQUIRE
ATTORNEY GENERAL

Dated: November 13, 2018

By:



ARIEL M. SMITH, ESQUIRE
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**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DISTRICT OF ST. THOMAS & ST. JOHN**

GOVERNMENT OF THE VIRGIN ISLANDS,	)	
	)	
	)	
Plaintiff,	)	
	)	
v.	)	CIVIL No.ST-18-CV-
	)	
	)	
Arturo Watlington, Jr. Esquire, in his official capacity	)	
as Chairman of the Virgin Islands Board	)	ACTION FOR
Of Elections and Board of Elections	)	DECLARATORY
	)	JUDGMENT AND
	)	INJUNCTIVE RELIEF
	)	
Defendants.	)	
	)	

**MEMORANDUM OF LAW IN SUPPORT OF
EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER
AND PRELIMINARY INJUNCTION**

COMES NOW Plaintiff, Government of the Virgin Islands ("Government") by and through its undersigned counsel, and hereby moves this court pursuant to V.I. Civ. P. 65 for a Temporary Restraining Order and Preliminary Injunction restraining and enjoining all Defendants herein from registering new voters between November 13, 2018, and November 25, 2018. In particular, the Government seeks to prevent registering of new voters, as it would be contrary to Virgin Islands law, particularly 18 V.I.C. § 94. On November 10, 2018, the Virgin Islands Attorney General issued an Advisory Letter which opined that the run-off election was a continuation of the general election, as is clear in language contained in 18 V.I.C. § 94(c) as well as the definitions section of Title 18 Virgin Islands Code. He also opined, that registering of new voters is not permitted during the period between the General Election and the run-off election.

1. FACTUAL BACKGROUND

On November 6, 2018, citizens of the Virgin Islands participated in a General Election for various offices including that of Governor and Lt. Governor. The final count of results of the General Election for the offices of Governor and Lt. Governor, however, did not produce enough votes for any one particular Governor/Lt. Governor team as is required under the Revised Organic Act of 1954, as amended ("ROA"). According to Section 11 of the ROA:

The Governor of the Virgin Islands, together with the Lieutenant Governor, shall be elected by a majority of the votes cast by the people who are qualified to vote for the members of the legislature of the Virgin Islands. The Governor and Lieutenant Governor shall be chosen jointly, by the casting by each voter of a single vote applicable to both officers. If no candidates receive a majority of the votes cast in any election, on the fourteenth day thereafter a runoff election shall be held between the candidates for Governor and Lieutenant Governor receiving the highest and second highest numbers of votes cast.

V.I.C. Rev. Org. Act of 1954 § 11. As such, a run-off election between the top two candidates was scheduled in accordance with law, fourteen days after the General Election, on Tuesday, November 20, 2018.

On Friday, November 9, 2018, the Board of Elections ("Board") held a meeting in order to finalize the details pertaining to the run-off election. One of the issues raised at the meeting was whether the Board would allow registration of new voters between now and the run-off election. That meeting, however, was cut short with no decision on the issue being made. As a result, numerous members of the Board reached out to the Department for formal legal advice on the matter.

Following the issuance of the Attorney General's Advisory Letter to the Board, it became apparent through at least one email—disseminated to the rest of the Board

members as well as to the Attorney General and certain members of the Department—that registration of new voters between now and the run-off election would still take place, despite the clear language of 18 V.I.C. § 94(c) and the legal advice provided by the Office of the Attorney General.

2. STANDARDS AND ARGUMENTS **FOR TEMPORARY RESTRAINING ORDER**

In deciding whether to grant a preliminary injunction, the Superior Court must consider four factors: (1) whether the movant has shown a reasonable probability of success on the merits; (2) whether the movant will be irreparably injured by denial of the relief; (3) whether granting preliminary relief will result in even greater harm to the non-moving party; and (4) whether granting the preliminary relief will be in the public interest. *Marco St. Croix, Inc. v. V.I. Hous. Auth.*, 62 V.I. 586, 590 (V.I. 2015) (quoting *Yusuf v. Hamed*, 59 V.I. 841, 847 (V.I. 2013)). The movant bears the burden of “making some showing on all four injunction factors”. The Superior Court “must evaluate the moving party’s showing on all four factors under a sliding scale standard” by making findings on each of the four factors and determining “whether—when the factors are considered together and weighed against one another—the moving party has made ‘a clear showing that [it] is entitled to injunctive relief.’” *3RC & Co., Inc. v. Boynes Trucking Sys.*, 63 V.I. 544, 557 (V.I. 2015) (quoting *Yusuf*, 59 V.I. at 847). The facts set forth above and the discussion below clearly demonstrate that the Government is entitled to immediate injunctive relief in order to preserve and protect the integrity of the 2018 Virgin Islands run-off election.

3. DISCUSSION

(A) REASONABLE PROBABILITY OF SUCCESS ON THE MERITS

The Government has a great likelihood of success on the merits of this case. As the Attorney General's Advisory Letter pointed out, the term "run-off" election is defined as an "election" in the Virgin Islands Code. *See*, 18 V.I.C. § 1. An "election", in turn, is defined as "any general or primary election, unless otherwise specified or indicated as in the term 'primaries and elections' where the intention is to refer to primary elections and general elections." Because the term "run-off" election is encompassed in the term "election", and a "run-off" election only applies to general "elections", it must follow that a "run-off" is either a separate general election, or a continuation of a general election. The Attorney General opined that it was a continuation of a general election with the same rules and deadlines applied to the general election also applying to the run-off election. This decision was supported by how other jurisdictions treat run-off elections.¹

Based on the rules of statutory construction and interpretation, the first step in determining statutory language is to determine if there is "a plain and unambiguous meaning with regard to the particular statute in the case, and the inquiry must cease if the

¹ *See, e.g.*, [Code of Ala. § 17-13-7.1](#) (stating, "If an elector votes in a primary election, he or she may vote in a subsequent primary runoff election only if he or she voted in the primary election of the same political party for which the runoff election is being held."); [O.C.G.A. § 21-2-501](#) (stating, "Only the electors entitled to vote in the first primary or election shall be entitled to vote in any run-off primary or election resulting therefrom; provided,The run-off primary or election shall be a continuation of the first primary or election, and only those votes cast for the candidates receiving the two highest numbers of votes in the first primary or election shall be counted."); [3 GCA § 13108](#) (stating, "Persons eligible to vote in a runoff election shall be the same voters who were eligible to vote at the election that precipitated the need for the runoff. When a runoff election is required, the Commission shall not purge the names of any voters for non-participation after a general election until after the runoff election has been held and its results certified."); [N.C. Gen. Stat. § 163A-1617e](#) stating, "Persons whose registrations become valid between the date of the first election and the runoff election shall be entitled to vote in the runoff election, but in all other respects the runoff election shall be held under the laws, rules, and regulations provided for the first election.").

statutory language is unambiguous and the statutory scheme is coherent and consistent.” *Robinson v. Shell Oil Co.*, 519 U.S. 337, 340 (U.S. 1997)(cleaned up). “The plainness or ambiguity of statutory language is determined by reference to the language itself, the specific context in which that language is used, and the broader context of the statute as a whole.” *Id.* at 341. The “words and phrases” in the statutes “shall be construed according to the common and approved usage of the English language.” 1 V.I.C. § 42.

Importantly, for the case at hand, 18 V.I.C. § 94(c) states:

The Board of Elections...shall sit for the purpose of examining and registering qualified electors on such days and at such times and places in addition to those provided in subsection (a) of this section as it may deem necessary or advisable for the accommodation of electors, except that **no electors shall be registered during the period of 30 days immediately preceding and five days immediately following each election.** (emphasis added).

This language is clear on its face and presents no ambiguities as to when registration periods are to be open. To register new voters between now and the run-off election would clearly violate this provision of law. The general election was conducted on November 6, 2018. The run-off election is scheduled for November 20, 2018. In light of Virgin Islands law, which is to be read in the conjunctive, no voter registration can take place thirty (30) days prior to an election and no less than five (5) days following an election. In other words, even if the Board were to interpret the statute to permit voter registration on November 11, 2018 (five days post-election), because less than thirty (30) days separate the general election and the run-off election, no voter registration is permissible during this period. Thus, even if it is interpreted that the run-off election is a separate general election, registration of voters during the interim period would still not be impermissible based upon

Virgin Islands statutory language. Accordingly, the first factor weighs heavily in favor of the Government.

(B) IRREPARABLE HARM

Permitting Board members to register new voters in violation of the dictates of Virgin Islands law jeopardizes the integrity of the 2018 run-off election. In particular, the Board is tasked to perform all functions with respect to the registration and party enrollment of electors. 18 V.I.C. § 47. By allowing the Board to register new voters and allowing them to vote in the run-off election would undermine the stability and efficiencies of the electoral process and will cause irreparable harm to the public confidence in the fairness and equity in the election system. The integrity of the elections in the Virgin Islands is paramount in ensuring the legitimacy of our elected leaders. One obvious concern would be fraudulent voter registration within such a short period of time.

Board members are not above the law, but must abide by and follow the law. The Government has an important role in preserving the integrity, stability, and reliability of the electoral process. The Board members have been selected by the voting public to safeguard and maintain the transparency and propriety of elections and this outweighs the Defendants' potential harm. To allow the Board to register new voters would be a blatant, flagrant and defiant violation of the law and result in voter apathy and loss of confidence in the fairness and integrity of the system. This factor weighs strongly in the Government's favor.

(C) BALANCING OF HARM

There is no harm to the Board members if they are directed to follow the law. Further, when a defendant's actions are found to be intentional, a court is not required to

balance the hardships. “Indeed, courts have deemed the application of the balancing test as ‘improper’ in such instances and the offending party is said to have acted at his own peril. See *Estates of Enfield Green Owner’ Assoc., Inc. v. Francis* 1995 WL 78297(D. Virgin Islands).

In fact, based on previous Board minutes, one concern voiced for not permitting the registration of new voters was that some unidentified potential voter may be disenfranchised if not allowed to vote. However, even if some unknown future plaintiff were not allowed to register, that potential harm is not enough to overcome the Board’s obligation to comply with Virgin Islands electoral laws. Statutory law routinely establish minimum standards and cutoff dates that serve to include some while excluding others (i.e., voting ages, drinking ages, registration cutoff dates, etc.) and as long as there is a rational basis for such actions they will be upheld. In fact, “[t]he Supreme Court has not subjected [voting] registration deadlines to the strict scrutiny test. Instead, it has consistently treated them as reasonable, nondiscriminatory restrictions subject to a relaxed standard of review.” *Diaz v. Cobb*, 541 F. Supp. 2d 1319, 1330, 2008 U.S. Dist. LEXIS 27361 (2008). “In analyzing the constitutionality of a registration deadline, the Court explained that the proper inquiry is whether the challenged law imposes ‘arbitrary time limit[s] unconnected to any important state goal.’” *Id.* (citing, *Rosario v. Rockefeller*, 410 U.S. 752, 760, 93 S. Ct. 1245, 36 L. Ed. 2d 1 (1973)). Indeed, “registration requirements . . . are ‘classic’ examples of permissible regulation.” *Diaz*, 541 F. Supp. 2d 1330 (citing, *Buckley v. American Constitutional Law Found., Inc.*, 525 U.S. 182, 196 n.17, 119 S. Ct. 636, 142 L. Ed. 2d 599 (1999)).

In this particular case, the right to vote is not impinged, only the timing of when the registration to vote can occur. It must be remembered that there are significant practical challenges to registering voters and the imposition of time-limit restrictions play an important function in maintaining an accountable and efficient electoral process. How can the limited staff of election officials properly vet any new registrants, much less handle any appeals made by those registrants, as well as properly structure and organize the run-off election in such a compact timeframe? Given the language of 18 V.I.C. § 94(c) and § 11 of the Revised Organic Act, it is clear the law intended the focus of the Election System between the general election and run-off Election is to focus on the integrity of run-off election, without the distraction of new-voter registration. Thus, the 30 day no registration period, prior to an election. It is for this reason that leads the Government to believe that any individual who was not a qualified elector, in advance of the November 6th election will not be harmed as a result of the registration cutoff-dates imposed by 18 V.I.C. § 94(c). As long as the Territory has a legitimate purpose for imposing such restrictions and they do not target a particular class of individuals, case law on the matter makes clear that those restrictions will be upheld.² This factor weighs heavily in the Government's favor.

² See, e.g., *Rosario v. Rockefeller*, 410 U.S. 752, 761-762, 93 S. Ct. 1245, 36 L. Ed. 2d 1 (1973)(stating, "It is clear that preservation of the integrity of the electoral process is a legitimate and valid state goal. In the service of that goal, New York has adopted its delayed-enrollment scheme; and an integral part of that scheme is that, in order to participate in a primary election, a person must enroll *before* the preceding general election. As the Court of Appeals stated: 'Allowing enrollment any time after the general election would not have the same deterrent effect on raiding for it would not put the voter in the unseemly position of asking to be enrolled in one party while at the same time intending to vote immediately for another.' For this reason, New York's scheme requires an insulating general election between enrollment and the next party primary. The resulting time limitation for enrollment is thus tied to a particularized legitimate purpose, and is in no sense invidious or arbitrary.")(cleaned up).

(D) PUBLIC INTEREST

The public interest's concern for the issuance of this requested TRO is paramount. This TRO will serve to enforce the laws of the Territory, which, in turn, are designed to effectuate an honest and well-oiled voting process—free from chaos and uncertainty. The public has every right to expect that the elected members of the Board will follow the laws, and not make up new laws based on their own personal beliefs. The Legislature of the Virgin Islands enacted 18 V.I.C. § 94(c) with every intention that it be followed in spirit and in practice. It is a dangerous proposition to suggest that a handful of Board members may want to unilaterally determine that they do not need to follow the same laws they have taken an oath to uphold, and it would be an even greater disservice to the people of this territory if those same individuals were allowed ignore their legal mandate. This factor weighs strongly in the Government's favor.

4. CONCLUSION

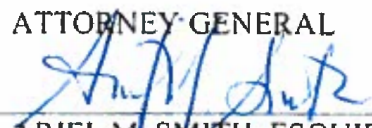
Based on the foregoing, the Government posits that all four (4) factors favor issuance of a Temporary Restraining Order and Preliminary Injunction in this matter to restrain and enjoin Chairman Watlington and Board members from registering new voters until after five (5) days after the run-off election.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court issue a Temporary Restraining Order and Preliminary and Permanent Injunction preventing the Defendants from registering new voters before the run-off election.

RESPECTFULLY SUBMITTED,

CLAUDE EARL WALKER, ESQUIRE
ATTORNEY GENERAL

Dated: November 13, 2018 By: _____


ARIEL M. SMITH, ESQUIRE
Assistant Attorney General
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SUPERIOR COURT

GOVERNMENT OF THE VIRGIN ISLANDS,

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COMPLAINT

COMES NOW PLAINTIFF, GOVERNMENT OF THE VIRGIN ISLANDS, (hereinafter "Government") by and through its undersigned counsel, and for its Complaint against Arturo Watlington, in his capacity as Chairman of the Board of Elections and the Board of Elections and state as follows:

1. This Court has jurisdiction pursuant to 4 V.I.C. §76.
2. This court has jurisdiction to render a declaratory judgment pursuant to 5 V.I.C. § 1261 et seq.
3. This is an action to redress violations of Virgin Islands Elections Law in particular, 18 V.I.C. § 94(c).
4. Plaintiff, Government of the Virgin Islands is the governing entity of the Territory of the United States Virgin Islands and has the power to sue in accordance with Section 2 of the Revised Organic Act of 1954 and 3 V.I.C. § 114.

5. Defendant Board of Elections (“BOE”) was established as a single Board by Act Nos. 7892 and 7982 in 2017. See, *De O’Neal v. Gov’t of the V.I.*, 68 V.I. 619, 619 (2018).

6. The BOE is the only policy making body that can establish the procedure for elections in the Virgin Islands.

7. Defendant, Arturo Watlington is the Chairman of the BOE.

8. Raymond Williams is the Vice Chairman of the BOE.

9. Other members of the BOE are Alecia Wells, Lisa Moorehead, Lydia Hendricks Maurice A. Donovan, Jr., Barbara McIntosh, Glenn Webster, Ephiphane Joseph, Jevon O. Williams, Ivy Moses, Max Schanfarber, Harriet Mercer, and Adelbert M. Bryan.

10. On November 6, 2018, citizens of the Virgin Islands participated in a general election which, among other offices, was to decide which candidates would serve as the next Governor and Lt. Governor of the territory.

11. The results of the gubernatorial race did not produce enough votes for any one particular Governor/Lt. Governor team, as is required under the Revised Organic Act of 1954, as amended, and as a result, a run-off election between the top two (2) candidates is scheduled for November 20, 2018.

12. The Board of Elections scheduled the 2018 run-off election in accordance with the Revised Organic Act which, in pertinent part provides:

... If no candidates receive a majority of the votes cast in any election, on the fourteenth day thereafter a runoff election shall be held between the candidates for Governor and Lieutenant Governor receiving the highest and second highest numbers of votes cast. V.I.C. Rev. Org. Act of 1954 § 11

13. On November 9, 2018, the BOE met to formulate policies for the upcoming run-off election for the office of Governor/Lt. Governor of the Virgin Islands. (See Exhibit 1).

14. One of the items on the agenda addressed voter registration and the allowance of new registrants (those registered between November 13 through November 16, 2018), to vote in the run-off election. (See Exhibit 1, Affidavit of Raymond J. Williams).

15. Vice Chairman Williams made a motion to suspend registration of new voters until after the run-off election. (See Exhibit 1).

16. This motion was ruled out of order by Chairman Arturo Watlington. (See Exhibit 1).

17. When Vice Chairman Williams challenged the Chairman's ruling, the meeting descended into chaos. (See Exhibit 1).

18. Member Lisa Moorhead read into the record her motion from the BOE's July 12, 2018 meeting addressing the registration requirements, in the event of a run-off election and during the discussion, member Moorhead reiterated that her motion only addressed registration and not the ability to vote during a run-off election. (See Exhibit 1 and Exhibit 2, Excerpt of Transcript of July 12, 2018 Meeting).

19. Chairman Watlington vehemently disagreed with the intent and express language of the July 12, 2018 Motion and with no consensus of the membership, he adjourned the meeting. (See Exhibit 1).

20. On November 9, 2018, Vice Chairman Williams, on behalf of the St. Croix members of the BOE, sent a request to the Attorney General requesting his opinion on whether the BOE can resume the registration of voters during the period prior to the run-off election and whether those individuals registered during that period can vote in the run-off election. (See Exhibit 1).

21. On November 10, 2018, the Attorney General issued an advisory opinion which, in pertinent part, states that “only those individuals who were qualified to vote for the November 6th election are eligible to vote in the November 20th run-off election” and that the “scheduled run-off election is a continuation of the general election that was held on November 6th and, pursuant to V.I.C. § 94(c), the Board must not register new voters between today and five days after the run-off election occurs.” (See Exhibit 3, November 10, 2018 Advisory Letter from Attorney General Walker).

22. On November 11, 2018, members of the Board and the Attorney General received an email from Chairman Watlington’s email address challenging the Attorney General opinion stating “The Ag has no influence or power over me. No law quoted. Other than the fear Mapp will be affected by new voters. Those of u who agree with him hurry to Court please.” (See Exhibit 4).

23. No member of the BOE who resides in the St. Croix District will register new voters before the run-off. (See Exhibit 1).

24. Based on Chairman Watlington’s email, it appears that Chairman Watlington will resume registration of new voters on November 13, 2018, in the District of St. Thomas/St. John. (See Exhibits 1 and 4).

Count I

Declaratory Judgment

25. Government restates and re-alleges paragraphs 1-24 of this Complaint as if fully set forth herein.

26. Title 18 V.I.C. § 1 provides two useful definitions to be used in construing the local election statutes. First, “‘election’ means any general or primary election, unless otherwise

specified or indicated as in the term ‘primaries and elections’ where the intention is to refer to primary elections and general elections.”

27. Second, “‘run-off election’ means an election that allows for the selection between the choices receiving the first and second largest number of votes cast in the general election.” Id. (emphasis added).

28. Based upon the plain language of the two definitions, it is apparent that the term “run-off election” is included in the definition of general “election.”

29. Because a “run-off election” is an election, and it only applies in situations involving a general election, it must follow that a “run-off election” is intended to be a continuation of the general election.

30. Therefore, only those eligible voters who were qualified to vote in the November 6, 2018, general election shall be qualified to vote in the upcoming run-off election.

31. Title 18 V.I.C. § 94(c), states that, “[t]he Board of Elections. . . shall sit for the purpose of examining and registering qualified electors on such days and at such times and places in addition to those provided in subsection (a) of this section as it may deem necessary or advisable for the accommodation of electors, except that no electors shall be registered during the period of 30 days immediately preceding and five days immediately following each election.”

32. To comport with the strictures of Section 94(c), qualified electors must have been registered 30 days “immediately preceding” the November 6th general election.

33. Thus, only those individuals who were qualified to vote in the November 6th election are eligible to vote in the run-off election.

34. The Government of the Virgin Islands is entitled to a declaratory judgment that the upcoming November 20, 2018 run-off election is a continuation of the November 6, 2018 general election.

35. The Government of the Virgin Islands is entitled to a declaratory judgment that only those eligible voters who were registered and qualified to vote in the November 6, 2018, general election shall be qualified to vote in the upcoming November 20, 2018 run-off election.

36. The Government of the Virgin Islands is entitled to a declaratory judgment that Virgin Islands law does not permit new voters to be registered between a general election and a run-off election.

37. The Government of the Virgin Islands is entitled to a declaratory judgment that BOE shall not register any new voters—in either district—between now and until five days after the run-off election.

Count II

Injunctive Relief

38. Government restates and re-alleges paragraphs 1-37 of this Complaint as if fully set forth herein.

39. Title 18 V.I.C. § 1 defines, “election” as “any general or primary election, unless otherwise specified or indicated as in the term ‘primaries and elections’ where the intention is to refer to primary elections and general elections” and “run-off election” as “an election that allows for the selection between the choices receiving the first and second largest number of votes cast in the general election.”

40. Based upon the plain language of the two definitions, it is apparent that the term “run-off election” is included in the definition of general “election” and that a “run-off election” is intended to be a continuation of the general election.

41. Therefore, only those eligible voters who were registered and qualified to vote in the November 6, 2018 general election shall be qualified to vote in the upcoming run-off election.

42. Title 18 V.I.C. § 94(c), which states that, “[t]he Board of Elections. . . shall sit for the purpose of examining and registering qualified electors on such days and at such times and places in addition to those provided in subsection (a) of this section as it may deem necessary or advisable for the accommodation of electors, except that no electors shall be registered during the period of 30 days immediately preceding and five days immediately following each election.”

43. To comply with Section 94(c), qualified electors must have been registered 30 days “immediately preceding” the November 6th general election.

44. Thus, only those individuals who were qualified to vote in the November 6th election are eligible to vote in the run-off election.

45. The Government is entitled to an order enjoining Chairman Watlington from registering any new voters until five (5) days after the November 20, 2018 run-off election.

46. The Government of the Virgin Islands is entitled to an order enjoining the BOE from registering any new voters until five (5) days after the November 20, 2018 run-off election.

47. The Government of the Virgin Islands is entitled to an order enjoining Defendant Wallington from allowing any person who was not registered to vote thirty (30) days before the November 6, 2018 from voting in the November 20, 2018 run-off election.

48. The Government of the Virgin Islands is entitled to an order enjoining Defendant BOE from allowing any person who was not registered to vote thirty (30) days before the November 6, 2018 from voting in the November 20, 2018 run-off election.

WHEREFORE, Government of the Virgin Islands prays for judgment against Defendants as follows:

A. Declaratory judgment that the upcoming November 20, 2018 run-off election is a continuation of the November 6, 2018 general election.

B. Declaratory judgment that Virgin Islands law does not permit new voters to be registered between a general election and a run-off election.

C. Declaratory judgment that BOE shall not register any new voters—in either district—between now and until five days after the run-off election.

D. Declaratory judgment that only those eligible voters who were qualified to vote in the November 6, 2018, general election shall be qualified to vote in the upcoming November 20, 2018 run-off election.

D. Order enjoining Chairman Watlington from registering any new voters until five (5) days after the November 20, 2018 run-off election.

F. Order enjoining the BOE from registering any new voters until five (5) days after the November 20, 2018 run-off election.

G. Order enjoining Defendant Watlington from allowing any person who was not registered to vote thirty (30) days before the November 6, 2018 from voting in the November 20, 2018 run-off election.

H. Order enjoining Defendant BOE from allowing any person who was not registered to vote thirty (30) days before the November 6, 2018 general election from voting in the November 20, 2018 run-off election.

I. Award Government of the Virgin Islands reasonable attorney's fees and costs;
and

J. Such other and further relief as the Court may deem appropriate.

RESPECTFULLY SUBMITTED,
CLAUDE EARL WALKER, ESQUIRE
ATTORNEY GENERAL

Dated: November 13, 2018

By:



ARIEL M. SMITH, ESQUIRE

Assistant Attorney General
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AFFIDAVIT OF RAYMOND J. WILLIAMS

I, Raymond J. Williams, in support of the Complaint and Motion for Temporary Restraining Order and Permanent Injunction in this matter, avers and states as follows:

1. I reside in the District of St. Croix.
2. I am a registered voter in the Virgin Islands.
3. I am the Vice Chairman of the Virgin Islands Board of Elections ("BOE").
4. On November 9, 2018, the BOE met to formulate policies for the upcoming run-off election for the office of Governor/Lt. Governor of the Virgin Islands.
5. One of the items on the agenda addressed voter registration and the allowance of new registrants (those registered between November 13 through November 16, 2018), to vote in the run-off election.
6. I made a motion to suspend registration of new voters until after the run-off election.
7. This motion was ruled out of order by Chairman Arturo Watlington.
8. When I challenged the Chairman's ruling, the meeting descended into chaos.
9. Member Lisa Moorhead read into the record her motion from the BOE's July 12, 2018 meeting addressing the registration requirements, in the event of a run-off election.
10. During the discussion, member Moorhead reiterated that her motion only addressed registration and not the ability to vote during a run-off election.
11. Chairman Watlington vehemently disagreed with the intent and express language of the motion and with no consensus of the membership, adjourned the meeting.
12. On November 9, 2018, I, on behalf of the St. Croix members of the BOE, sent a request to the Attorney General requesting his opinion on whether the BOE can resume the registration of voters during the period prior to the run-off election and whether those individuals registered during that period can vote in the run-off election.



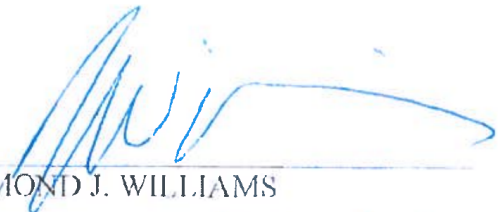
13. On November 10, 2018, I, along with the other members of the BOE, received an advisory opinion issued by the Virgin Islands Attorney General Claude Walker which, in pertinent part, states that "only those individuals who were qualified to vote for the November 6th election are eligible to vote in the November 20th run-off election" and that the "scheduled run-off election is a continuation of the general election that was held on November 6th and, pursuant to V.I.C. § 94(c), the Board must not register new voters between today and five days after the run-off election occurs."
14. On November 11, 2018, I received an email from Chairman Watlington's email address challenging the Attorney General opinion stating "The Ag has no influence or power over me. No law quoted. Other than the fear Mapp will be affected by new voters. Those of u who agree with him hurry to Court please."
15. As a member of the BOE, I believe that registering new voters in the interim period between the 2018 general election and the 2018 run-off election and allowing newly registered to vote in the 2018 run-off election violates 18 V.I.C. § 94(c).
16. No member of the BOE who resides in the St. Croix District will register new voters before the run-off.
17. Based on Chairman Watlington's email, it appears that Chairman Watlington will resume registration of new voters on November 13, 2018, in the District of St. Thomas/St. John.

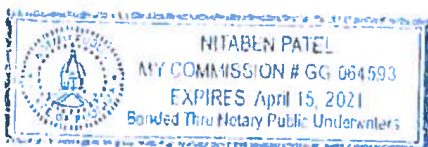
FURTHER AFFIANT SAYETH NOT.

State of Florida
County of Orange
Sworn and Subscribed to me
this 12 day of Nov 2018
Subscribed and Sworn to before me
this 12 day of November 2018.

Noted

NOTARY PUBLIC
Commission No. GG 064593
Commission Expires: 4-15-21


RAYMOND J. WILLIAMS
U.S. Virgin Islands P.L.
0300042831



1 EXCERPT ON VOTER REGISTRATION
2

3 CHAIR WATLINGTON: Next item is Registration
4 after General Election.

5 Mrs. Fawkes.

6 SUPERVISOR FAWKES: Again, that became an
7 issue in 2014. If we're projecting there may be a run-off, we
8 had one district saying, we're going to do five days after to open
9 and another is saying no, based on the law. It's not.

10 The General Election; the run-off is a continuation
11 of the General Election. So if you're registered at that time, you
12 should be eligible to vote in the run-off.

13 So our recommendation – again, that's the law. We have to get
14 the law either amended or repealed. Because now it's saying five
15 days after, we open.

16 So I'm just bringing it up. It's something we have
17 to look at and get legislation to address it.

18 MEMBER MCINTOSH: Say it again. I missed half.

19 CHAIR WATLINGTON: Mrs. Fawkes, do you want
20 me to read the law? What the law says? So it could be very clear
21 to every one?

EXHIBIT

2

tabbies

1 SUPERVISOR FAWKES: Yes.

2 CHAIR WATLINGTON: Okay.

3 94.

4 SUPERVISOR FAWKES: 94A.

5 CHAIR WATLINGTON: We're talking about
6 registration. Let me read it.

7 MEMBER MCINTOSH: Mr. Chair, could you repeat
8 the section and the title again?

9 CHAIR WATLINGTON: Section 94, Title 18.

10 A. The offices of each Boards of Election shall be open for
11 examination and registration of electors everyday from eight
12 o'clock to five o'clock p.m., except Saturday, Sunday, legal
13 holidays, and except during the period of 30 days immediately
14 preceding and five days immediately following each election.
15 That's the pertinent section.

16 MEMBER WILLIAMS: So what's the question?

17 SUPERVISOR FAWKES: The concern was when we
18 have a run-off, which we did in 2014. We're either preparing for
19 a run-off in that 14-day window. So if you open five days after
20 the election; in St. Croix, you said shut it down.

21 In the St. Thomas District, based on the attorney's advice, they

1 said we can register the folks. But you really shouldn't be able
2 to vote in the General Election because they were not registered
3 prior to that time. The new registrants; they said they couldn't
4 participated in the run-off.

5 MEMBER WILLIAMS: You registered after
6 the election cycle began. How are you participating in something
7 that you weren't registered for?

8 CHAIR WATLINGTON: May I say something on it?

9 MEMBER WILLIAMS: Sure. Go ahead.

10 CHAIR WATLINGTON: The law says five days
11 immediately following the election.

12 Now, are you telling me that I make birthday; I
13 make 18 the day after the General Election and I become eligible
14 to vote. You're telling me: Oh. Because you weren't eligible on
15 the General Election Day, I can't vote in the run-off? Is that what
16 you're telling me?

17 MEMBER WILLIAMS: First and foremost, you're
18 eligible to vote if you make 18 prior to that date, Election Day,
19 you can register to vote.

20 CHAIR WATLINGTON: After. After.

21 MEMBER WILLIAMS: After. Got you.

1 CHAIR WATLINGTON: Laws are made to protect
2 not the majority, you know; but the minority. So if you deny one
3 person the right to vote, you're doing something wrong. That's
4 why for me, it's an issue. Because we shouldn't care how many
5 people participate in a run-off.

6 And are you saying those people who didn't vote in
7 the General Election who are eligible to vote in the run-off can't
8 vote in the run-off? That's not true.

9 MEMBER WILLIAMS: That's my position.

10 CHAIR WATLINGTON: The law is very clear.
11 It says five days after the election. We shouldn't be denying
12 people the right to register or who is eligible to register.
13 Suppose I forget and I came on July 9th and I couldn't register
14 because we cut off registration on July 5th or 8th. Then I am
15 estopped from voting in the run-off? That's what we're saying?

16 MEMBER WILLIAMS: I have stated my position
17 on record. I personally believe and I am not the legal scholar,
18 but at the end of the day, in my view; if you participate in an
19 election cycle, you are registered to participate in that election
20 cycle. The realistic thought process for me is that if we go to
21 a run-off, 5,000 people didn't register prior to the election.

1 They didn't participate in neither a Primary; Early Voting.

2 They didn't participate in a General Election. Why should they
3 be given the opportunity or the right to participate in that
4 election?

5 If you are an elector and let's say God forbid, the
6 majority of people have voted in the General Election and the
7 will of the people was that because they didn't get the 50% plus
8 one vote. Now, I'm the candidate that didn't get the 50% plus
9 one. So I'm going to run out in the street and register another
10 500,000 people so I could get that vote, and that's not biased?

11 CHAIR WATLINGON: Hold on. Ms. McIntosh.

12 MEMBER MCINTOSH: My question is, because
13 Mr. Williams just said you registered to vote. Not necessarily
14 for that election cycle. So I'm saying if the law doesn't prohibit
15 a person whatever time they registered to vote in whether the
16 run-off or the General Election; they should be allowed to vote.
17 The law doesn't prohibit it.

18 The law doesn't say if you're not registered before
19 the run-off, you should not vote in that run-off. It doesn't say
20 that.

21 MEMBER WILLIAMS: I agree.

1 MEMBER MCINTOSH: We shouldn't be so
2 subjective and decide well, because of how we feel, we should
3 disenfranchise people. We shouldn't do that. That's my opinion.

4 CHAIR WATLINGTON: Mr. Joseph.

5 MEMBER JOSEPH: Mr. Chairman, the changing
6 of the law: Once you're registered to vote, you have a permanent
7 registration. So there is no cancellation any more. So you're
8 allowed to vote. Someone can choose. That law dismisses any
9 concern. It's a legitimate concern, but it is what it is.

10 So if the person is registered to vote, I can register
11 to vote and choose not to participate in the General Election.
12 Then I came back in the run-off, because of whatever decision
13 that is going to be made, I am a citizen; it's going to affect me.
14 So I should have that privilege to be able to vote at any time.

15 The changing of the law dismisses the argument.
16 No cancellation.

17 CHAIR WATLINGTON: Mrs. Fawkes.

18 SUPERVISOR FAWKES: Our concern is staff.
19 We have a limited staff. But during that period, we'll either
20 register or we'll try to conduct Early Voting. The last time we
21 tried to do Early Voting and that's the issue. You can't do both.

1 So we have to make a decision. Either you're going
2 to have Early Voting or you're going to open up for registration.
3 We only have a limited time. You have 14 days. Our vote is to
4 get the ballots. Try to get them out to people. Absentee and
5 Early Voting. We can't do registration and Early Voting in the
6 same office. It becomes an issue.

7 That's why this is a discussion. Other states have
8 a run-off defined, which we don't. It clearly states that a General
9 Election; you do not open again if you have a run-off. So the
10 law needs to be amended to adjust to that. That's why we're
11 having this discussion.

12 So you're going to either have it one way or the
13 other. You either want us to try to do Early Voting in 14 days
14 or you'll either register for five days after and cut off.
15 You don't have 30 days to cut off in 14 days either. So you can't
16 follow the law fully, because you do not have 30 days to cut off
17 prior to the run-off. It's a 14-day window.

18 CHAIR WATLINGTON: Mrs. Harris-Moorhead.

19 MEMBER MOORHEAD: For purposes of discussion
20 only; I was looking for the definition section of Title 18.

21 Section 1 defines election. It only defines Primary and General

1 Election. So I think the argument could be made either way.

2 My concern though is that the other statute, 94
3 says each election. But since my office says it's defined as an
4 election, you might be able to lend that to credence of what
5 Member Williams is saying; that the run-off is part of the General
6 Election. Because it's not defined, it's a separate election.

7 I don't know. I'm just pointing out because I was
8 looking for that. You're not defining run-off in the Code.
9 It really doesn't address it.

10 CHAIR WATLINGTON: Ms. Douglas would like to
11 say something. Ms. Douglas.

12 MS. K. DOUGLAS: I just wanted to add to what
13 the Supervisor was saying. In addition to that, if the books have
14 been closed, it's because we would have already set up the
15 Voter Registration data base for the General Election. Then you
16 register persons after that; those names will not be included in
17 the e-poll books.

18 CHAIR WATLINGTON: Ms. Mercer, do you have
19 any comment?

20 MEMBER MERCER: Nothing on that one.

21 CHAIR WATLINGTON: Mr. Donovan.

1 MEMBER DONOVAN: No comment.

2 CHAIR WATLINGTON: Ms. Hendricks.

3 MEMBER HENDRICKS: I see it both ways, but I
4 still feel that a good argument is if I made birthday after and I
5 so excited about voting and you're telling me I cannot vote
6 because I didn't vote before. I wasn't eligible before. But I am
7 now eligible, so I should be given that opportunity to vote because
8 I'm within the time.

9 CHAIR WATLINGTON: That's right.

10 I'm going to weigh in on my own now and then we
11 could decide.

12 I believe we should follow the law. I don't believe
13 the problems of our technology of issues about e-poll book and
14 all of that has anything to do with a person's right to vote and
15 to register to be able to vote. Because we can do those things
16 manually. These people can vote via a Provisional Ballot.

17 We can check it out and then determine that they
18 were registered between the General and the run-off. I
19 understand your practical issues. But I am concerned about
20 following the law as it applies to this because if it's my child and
21 you tell him he can't vote, we're going for a TRO. Because we

1 have a problem regarding how we handle the technological
2 advances that we make, because my name can't go in an e-poll
3 book.

4 When somebody's name can't be found in an e-poll
5 book, what do we do? We let them vote by Provisional ballot.
6 That's my take on it.

7 St. Croix. Mr. Williams and then go 'round again.

8 MEMBER WILLIAMS: Go ahead. You were talking.

9 MEMBER MCINTOSH: I was saying in terms of the
10 technology. That's what I was about to say when he said about
11 our internal issues. They can do it.

12 I mean I really, really don't want to hear that
13 somebody can't vote because we have some technical something
14 that caused it not to happen. Our job, I think we should go out
15 of our way, if we have to work until midnight to make sure that
16 people are allowed the opportunity to vote. Come what may.

17 We shouldn't be talking about what can't happen; we don't have
18 any staff and this and that. We should go out of our way.

19 Hire contractual staff if we have to during the Election time to
20 do other work that they can do that the Election staff would be
21 freed up.

1 We have Election staff counting out supplies.
2 Get other people to count supplies. I'll come and count supplies.
3 I'll count supplies for free, so you can have the workers focused
4 on doing the things that other people cannot come in here and
5 do. So we're talking about what can happen and can't happen.

6 Whenever something needs to be done, we have to
7 make it happen. Not say what can't happen.

8 CHAIR WATLINGTON: Ms. Douglas, you wanted
9 to say something again?

10 MS. DOUGLAS: No.

11 CHAIR WATLINGTON: Mrs. Fawkes.

12 SUPERVISOR FAWKES: No.

13 CHAIR WATLINGTON: Mr. Joseph.

14 MEMBER JOSEPH: But isn't there jurisdiction
15 where people register the same day of the election?

16 MEMBER MCINTOSH: Yeah. Same Day Voting.

17 CHAIR WATLINGTON: Many places do it.

18 MEMBER JOSEPH: This discussion is good.
19 Can we move to another?

20 CHAIR WATLINGTON: No. Let's make sure we

1 understand what may happen between a possible General
2 Election and the run-off. Because we don't have the same
3 problem. Do we? Between the Primary and the General?

4 The only reason we don't have it is because of the
5 short window of opportunity. Is that the concern, Mrs. Fawkes?

6 SUPERVISOR FAWKES: That's the concern.

7 Doing two processes in our office. We're using Early Voting.
8 To me, I think Early Voting is more maximizing than getting
9 people to register. So we're either going to register for the ten
10 days between or we're going to do Early Voting for three days
11 or two days or no days. We have Absentee ballots to continue
12 the process.

13 My thing is we need to get the Code updated, like
14 we talked about two years. A definition for run-off. Everywhere
15 there's a run-off definition has that. So I agree; you're going to
16 follow the law now, but there is a run-off definition that we need
17 to get in the Code. Because every place else, the books are
18 closed; 30 days. So they would not open up the books because
19 they don't have 30 days to close the books.

20 CHAIR WATLINGTON: Mrs. Harris-Moorhead.

1 MEMBER MOORHEAD: Given that people are
2 saying that - I don't agree that it should be either/or. I do agree
3 with the supervisor that it was a hot mess in here when it was
4 going on. So why can't the board register people some place else?
5 That would solve the problem.

6 CHAIR WATLINGTON: What do you mean register
7 some place else?

8 MEMBER MOORHEAD: Other than the physical
9 Elections office. What Mrs. Fawkes is saying two things can't
10 be happening in this office at the same time. We only need two
11 members of the board to do a function. Supposedly we have
12 seven on each island, although everybody doesn't participate.

13 The board can volunteer. Two to do Early Voting
14 and two to do registration. We could do registration some place
15 else. We could find a location. Ask Terrell or Ms. Douglas to find
16 a location for those days and show up those days to do
17 registration. Those people who think it should be done, like Mr.
18 Watlington and Ms. Jackson will be there.

19 CHAIR WATLINGTON: I don't have a problem
20 with the suggestion. I have a problem with it being some place
21 else. Because in fact, people register here. But when we register

1 people outside, it's pretty much the same process. You fill out
2 their Registration Card. You give it to them. We can create a
3 list of the new registrants between November 6th and whenever
4 the run-off is.

5 SUPERVISOR FAWKES: Mr. Watlington, we're
6 talking about our space and location in St. Croix. We cannot
7 register folks. That's what we're talking about going some place
8 else.

9 CHAIR WATLINGTON: I understand your problems
10 in St. Croix. If I'm going to help register people during that
11 period of time, I'm not going no place else. I'm going to come in
12 here. They come, sit down there; I register them there; they go.
13 I'm not going no place else to do it.

14 MEMBER MOORHEAD: You have the space over
15 there. Why can't we in St. St. Croix find another location?
16 That's all I'm saying. If that's the only problem, it's the physical
17 limitation.

18 CHAIR WATLINGTON: The Conference Room in
19 St. Croix is too small is what you're saying.

20 SUPERVISOR FAWKES: This is the Conference
21 Room.

1 CHAIR WATLINGTON: You don't have much space.

2 Yeah. I understand. We still have a lot of space here, even
3 though the machines will be used in here.

4 SUPERVISOR FAWKES: Correct. Thank you for
5 that. We're going to get ours next year. Don't worry.

6 CHAIR WATLINGTON: Well, I don't think you try
7 hard enough to get that Capital Budget.

8 SUPERVISOR FAWKES: I try hard. I talk to the
9 senators; everybody talk to them.

10 CHAIR WATLINGTON: So what is the decision?

11 SUPERVISOR FAWKES: Follow the law. Find a
12 place to do it.

13 CHAIR WATLINGTON: That's my opinion.

14 MEMBER WILLIAMS: Let's put it to a motion.
15 That's all.

16 MEMBER MOORHEAD: Motion.

17 CHAIR WATLINGTON: Motion, Mrs. Harris-
18 Moorhead.

19 MEMBER MOORHEAD: I moye that the St. Croix
20 staff, in the person of Mr. Alexandre or whomever the supervisor
21 deems appropriate, look for a location where St. Croix board

1 members can register people between the General Election
2 and the run-off.

3 MEMBER MCINTOSH: Second.

4 MEMBER WILLIAMS: Objection.

5 CHAIR WATLINGTON: It's been moved by Mrs.
6 Harris-Moorhead; seconded by Mrs. McIntosh. Objected to
7 by Mr. Williams that the St. Croix staff – that the deputy in
8 St. Croix secure a location on St. Croix for the purpose of
9 registering individuals who want to be registered between
10 Election Day 2018 and any possible run-off day.

11 Is that correct?

12 MEMBER MOORHEAD: Yes.

13 CHAIR WATLINGTON: All right.

14 It's been objected to. One minute for the objector.

15 MEMBER WILLIAMS: My bottom line is that I
16 objected to the fact that we're putting the cart before the horse.
17 We will not dispense whether or not we're going to allow people
18 to participate in the election after the General for a run-off.

19 MEMBER MCINTOSH: It's not for us to allow.

20 It's the law. They have to.

21 MEMBER MOORHEAD: If they get registered, they

1 can vote.

2 CHAIR WATLINGTON: I think you would be eligible
3 to register until you're prohibited and you're not prohibited.

4 SUPERVISOR FAWKES: But you still have to get
5 the books ready for the run-off. So you can't go up to the date
6 of the run-off. The run-off is the 20th.

7 CHAIR WATLINGTON: What did you say we have
8 to get ready for, Mrs. Fawkes?

9 SUPERVISOR FAWKES: The e-poll information.

10 CHAIR WATLINGTON: Those people will not be in
11 the e-poll book. It will be too difficult for you to put them in.

12 SUPERVISOR FAWKES: So you're going to register
13 them until the 19th of November?

14 CHAIR WATLINGTON: If they come.

15 SUPERVISOR FAWKES: So that's the 11th to the
16 19th.

17 CHAIR WATLINGTON: All right. That's what's
18 being suggested. All right. So the board will be doing the
19 registration between that time. Is that what we're saying?

20 MEMBER MOORHEAD: That's the motion. Yes.

21 CHAIR WATLINGTON: All right. So we'll have to

1 devise some process of the board being available. All right.

2 Roll call.

3 MEMBER HENDRICKS: Maurice Donovan.

4 MEMBER DONOVAN: Yea.

5 MEMBER HENDRICKS: Lydia Hendricks. Yes.

6 Harriet Mercer.

7 MEMBER MERCER: Yes.

8 MEMBER HENDRICKS: Arturo Watlington.

9 CHAIR WATLINGTON: Yea.

10 MEMBER HENDRICKS: Lisa Harris-Moorhead.

11 MEMBER MOORHEAD: Yes.

12 MEMBER HENDRICKS: Barbara Jackson-

13 McIntosh.

14 MEMBER MCINTOSH: Yes.

15 MEMBER HENDRICKS: Mr. Epiphane Joseph.

16 Absent.

17 Raymond Williams.

18 MEMBER WILLIAMS: No.

19 MEMBER HENDRICKS: We have six yeas, --

20 Mr. Joseph.

21 MEMBER JOSEPH: Abstained.

1 MEMBER HENDRICKS: We have one abstention;
2 one no, six yes, six absent.

3 CHAIR WATLINGTON: The motion passes.
4 The next item is the organization of District
5 Committees.

6 End of excerpt.
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THE UNITED STATES VIRGIN ISLANDS
DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL

CLAUDE EARL WALKER, ESQUIRE
ATTORNEY GENERAL

November 10, 2018

ADVISORY LETTER

By Electronic Mail Only

Caroline F. Fawkes, CERA
Supervisor, Elections System of the Virgin Islands
Sunny Isle Annex Unit 4, 93A
Christiansted, VI 00823

Board Members St. Croix
Virgin Islands Board of Elections
Sunny Isle Annex Unit 4, 93A
Christiansted, St. Croix USVI 00823

Board Members St. Thomas/St. John
Virgin Islands Board of Elections
Lockhart Gardens
Charlotte Amalie, USVI 00802

Re: Advisory letter on the legality of registering new individuals for a run-off election

Dear Supervisor Fawkes and Board Members:

At the request of a number of Virgin Islands Board of Elections members, the Department of Justice ("DOJ") was requested to issue an advisory letter on DOJ's interpretation of the election laws in relation to the question of who can legally vote in the upcoming November 20th run-off election for the positions of Governor and Lt. Governor. This advisory letter supersedes all previous opinions or advisories that may have been issued by the Office of the Attorney General on this matter.

BACKGROUND

On November 6, 2018, citizens of the Virgin Islands participated in a general election which, among other offices, was to decide which candidates would serve as the next Governor and Lt. Governor of the territory. The results of that race did not produce enough votes for any one particular Governor/Lt. Governor team, as is required under the Revised Organic Act of 1954, as amended, and as a result, a run-off election between the top two (2) contenders is scheduled for November 20, 2018.

EXHIBIT

3

Then, on Friday, November 9, 2018, the Board of Elections ("Board") held a meeting in order to discuss details pertaining to the run-off election, and among the issues raised at the meeting was whether the Board would allow the registration of new voters between now and the run-off, and whether any newly-registered voters could legally vote in the upcoming run-off. That meeting, however, was cut short with no resolution. Because of the uncertainty of these issues, numerous members of the Board have contacted DOJ for formal guidance on the matter.

ISSUE PRESENTED

Whether potential voters—who were not qualified electors prior to the November 6, 2018 election—can be registered and legally vote in the run-off election given the language in 18 V.I.C. § 94(c).

ISSUE ANSWERED

No. A run-off election is a continuation of a general election and only those individuals who were registered and qualified to vote in the November 6th election are qualified to vote in the run-off.

DISCUSSION

In the instant matter, 18 V.I.C. § 1 provides two useful definitions to be used in construing the local election statutes. First, "'election' means any general or primary election, unless otherwise specified or indicated as in the term 'primaries and elections' where the intention is to refer to primary elections and general elections."

Second, "'run-off election' means an election that allows for the selection between the choices receiving the first and second largest number of votes cast in the general election." *Id.* (emphasis added).

Based upon the plain language of the two definitions, it is apparent that the term "run-off election" is included in the definition of general "election." Because a "run-off election" is an election, and it only applies in situations involving a general election, it must follow that a "run-off election" is intended to be a continuation of the general election. Based upon this interpretation, only those eligible voters who were qualified to vote in the November 6, 2018, general election shall be qualified to vote in the upcoming run-off election.

This interpretation is supported by virtually every other U.S. jurisdiction. For example, in Georgia, O.C.G.A. § 21-2-501, provides, "Only the electors entitled to vote in the first primary or election shall be entitled to vote in any run-off primary or election resulting therefrom; provided, . . . The run-off primary or election shall be a continuation of the first primary or election, and only those votes cast for the candidates receiving the two highest numbers of votes in the first primary or election shall be counted." (emphasis added).

In Guam, 3 GCA § 13108, provides that "Persons eligible to vote in a run-off election shall be the same voters who were eligible to vote at the election that precipitated the need for the

Caroline F. Fawkes and All Board Members

Re: Advisory letter on the legality of registering new individuals for a run-off election

November 10, 2018

Page 3 of 3

run-off. When a run-off election is required, the Commission shall not purge the names of any voters for non-participation after a general election until after the run-off election has been held and its results certified." (emphasis added).

In addition, in Alabama, Code of Ala. § 17-13-7.1, states that "If an elector votes in a primary election, he or she may vote in a subsequent primary run-off election only if he or she voted in the primary election of the same political party for which the run-off election is being held."

This line of reasoning follows in the Virgin Islands under 18 V.I.C. § 94(c), which states that:

The Board of Elections. . . shall sit for the purpose of examining and registering qualified electors on such days and at such times and places in addition to those provided in subsection (a) of this section as it may deem necessary or advisable for the accommodation of electors, **except that no electors shall be registered during the period of 30 days immediately preceding and five days immediately following each election.** (emphasis added)

In other words, to comport with the strictures of Section 94, qualified electors must have been registered 30 days "immediately preceding" the November 6th general election.

Therefore, only those individuals who were qualified to vote for the November 6th election are eligible to vote in the November 20th run-off election. The Board must not register any new voters—in either district—between now and until five days after the run-off election.

CONCLUSION

The scheduled run-off election is a continuation of the general election that was held on November 6th and, pursuant to V.I.C. § 94(c), the Board must not register new voters between today and five days after the November 20th run-off election occurs.

Sincerely,

A handwritten signature in blue ink that reads "Claude Earl Walker". The signature is fluid and cursive, with a long horizontal stroke at the end.

Claude Earl Walker, Esq.
Attorney General

From: Arturo Watlington <arwatlington@yahoo.com>

Date: November 11, 2018 at 12:35:13 PM AST

To: Anola Duncan <anola.duncan@vi.gov>

Cc: Caroline Fawkes <Caroline.Fawkes@vi.gov>, "raywilldonr@yahoo.com" <raywilldonr@yahoo.com>, "vladm@aol.com" <vladm@aol.com>, "lhmoor@hotmail.com" <lhmoor@hotmail.com>, "lydiahendricks0122@gmail.com" <lydiahendricks0122@gmail.com>, "maurice.donovan.jr@gmail.com" <maurice.donovan.jr@gmail.com>, "kevermay.douglas@vi.gov" <kevermay.douglas@vi.gov>, "glennwebster11@gmail.com" <glennwebster11@gmail.com>, "epiphaneej@gmail.com" <epiphaneej@gmail.com>, "jevon.o.williams@gmail.com" <jevon.o.williams@gmail.com>, "max@virtualstthomas.com" <max@virtualstthomas.com>, "ivylmsw@gmail.com" <ivylmsw@gmail.com>, Claude Walker <Claude.Walker@doj.vi.gov>, Pamela Tepper <pamela.tepper@vi.gov>, Brian Laik <Brian.Laik@vi.gov>

Subject: Re: Advisory letter on the legality of registering new individuals for a run-off election

The Ag has no influence or power over me. No law quoted. Other than the fear Mapp will be affected by new voters. Those of u who agree with him hurry to Court please.

Sent from my iPhone

On Nov 10, 2018, at 4:07 PM, Anola Duncan <anola.duncan@vi.gov> wrote:

Good afternoon,

Please find the attached Advisory Letter from Attorney General Claude Walker regarding the above subject matter.

Regards,

<image001.png>

Anola Duncan

EXECUTIVE SECRETARY TO THE ATTORNEY GENERAL
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