

SUPREME COURT OF THE U. S. VIRGIN ISLANDS

IN RE: PETITION OF

CIV. NO. 2017/_____

JANELLE K. SARA UW

PETITION FOR WRIT OF MANDAMUS

Now comes, JANELLE K. SARA UW, through the undersigned, who petitions this Court for a writ mandating the VI Superior Court enter an order with respect to the St. Thomas/St. John Board of Elections members' (BOE) refusal to certify the results of the April 8, 2017 Special Election.

I. Factual Background

The Petitioner limits the facts to the events after this Court's June 8, 2017 opinion.

Kevin A. Rodriquez initiated suit against the newly elected 32nd VI Legislature in the District Court of the US Virgin Islands seeking

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1 affirmative injunctive and declaratory relief that only the legislature
2 could determine whether he was qualified to run for a senate seat.
3
4 Rodriquez also successfully removed the Sarauw and Berry case to
5 the federal venue; their motion to remand was denied. On February
6
7 7, 2017, the VI District Court dismissed the suits, and invited the
8 Governor of the US Virgin Islands to call for a special election
9 implicitly holding that there was a vacancy. On February 7, 2017,
10 Governor Kenneth E. Mapp executed a proclamation calling for a
11 special election.
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14 On March 8, 2017, thirty days later, Rodriquez filed a notice of
15 appeal. On Sunday, March 12, 2017, almost six (6) weeks after the
16 Governor called for a special election, Rodriquez asked the District
17 Court to stay the Governor's proclamation calling for a special
18 election, which had been scheduled for April 8, 2017. Both the
19 District Court and the Third Circuit denied Rodriquez's request for a
20 stay of the April 8, 2017 Special Election.
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24 On April 8, 2017, a special election was held. Pursuant to Title
25 18, Section 47(9), the BOE members are required to compute the
26 returns and certify the results to the Supervisor of Elections in 15
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1 days.¹ The BOE did not certify the election results and continues to
2 delay and/or refuse to execute its duty.
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4 On or about May 18, 2017, Plaintiff-Petitioner Sarauw filed a
5 complaint seeking declaratory and injunctive relief with respect to
6 the Board of Elections' refusal to certify the results of the April 8,
7 2017 Special Election. The complaint was accompanied by a motion
8 petitioning for expedited mandamus relief. See, **Exhibit 1**
9 **(Motion)**. On May 30, 2017, Sarauw filed a Supplemental
10 Emergency Motion also seeking injunctive relief. See, **Exhibit 2**.
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14 On or about June 22, 2017, the parties participated in oral
15 argument, at which time, the BOE's counsel would not provide a
16 definitive response to court inquiries whether or not the BOE would
17 certify the results of the April 8, 2017 special election if the
18 Legislature voted not to seat Rodriquez. **Exhibit 3** at 36-41
19 (Transcript). Judge Kathleen Mackay also advised that she would
20 not be ruling until after the Senate hearing. *Id.* at 71-72.
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26 18 VIC § 47(9) provides:

27 receive from election officers the returns of all primaries and elections, canvass, and
28 compute the returns, and certify, no later than fifteen days following the primary or
election, the results thereof to the Supervisor of Elections;

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1 On or about June 28, 2017, in an 8 to 6 vote, the 32nd
2 Legislature voted not to seat Kevin Rodriquez.

3
4 On June 29, 2017, Plaintiff-Petitioner Saruaw requested a
5 ruling. **Exhibit 4.** On June 29, 2017, the 32nd Legislature
6 requested that the BOE certify the results of the April 8, 2017
7 Special Election. **Exhibit 5.**

8
9 On June 30, 2017, the Daily News reported that Arturo
10 Watlington and the BOE were in no hurry to certify the results of the
11 April 8, 2017 special election. See, **Exhibit 6.** On June 30, 2017,
12 the Plaintiff-Petitioner filed a Supplemental request for a ruling
13 attaching the Daily News article. *Id.*

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15 As of today's date, the Superior Court has not ruled.

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18 **II. Issue Presented.**

19 Whether the Board of Elections Board Members have any
20 power except to perform the ministerial duty of certifying
21 the April 8, 2017 special election.
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24 **III. Applicable Law & Argument**

25
26 **A. The Court has original jurisdiction to provide**
27 **mandamus relief.**

28 "[M]andamus relief is an extraordinary remedy and should

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1 only be issued if there are compelling circumstances.” *O'Reilly v.*
2 *Bd. of Elec.*, 61 V.I. 118 (Super. Ct. 2014). This Court has original
3 jurisdiction over mandamus proceedings directed to judges and
4 non-judges. V.I.S.CT.R 13(a). In order to obtain relief, the
5 Petitioner must establish:
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7

- 8 (1) there is no other adequate means to obtain the relief
9 sought;
10
11 (2) a clear and indisputable right; and,
12
13 (3) the writ is not inappropriate under the circumstances.

14 *Cheney v. U.S. Dist. Court for the Dist. of Columbia*, 542 U.S. 367,
15 380-381 (2004). It is not unusual for courts to issue mandamus to
16 compel an elections board to certify an election.
17

18
19 Sarauw was a candidate in the April 8, 2017 Special Election
20 and it has been reported that she is the winning candidate of the
21 Special Election; thus, she has a clear and indisputable right to
22 request mandamus relief. *Hansen v. O'Reilly*, 62 V.I. 494 (V.I.
23 2005) (standing discussion). Next, mandamus relief is appropriate
24 because the Defendants have a statutory duty to certify the results
25 of the special election. Pursuant to Section 47(9) Defendants are
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1 required to compute election returns and certify the results within
2 15 days. This issue has been pending in the Superior Court since
3 May 18, 2017 and it appears the lower court was waiting for the
4 Third Circuit to rule and then the 32nd Legislature to vote with
5 respect to Rodriquez's eligibility. Further, the BOE has not shown
6 any respect for the request of the 32nd Legislature to certify the
7 results of the April 8, 2017 Special Election.
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11 Although under principles of comity and full faith and credit,
12 the federal courts and the Virgin Islands courts are expected to
13 respect the opinions of the other, the federal courts' opinions are
14 not binding on the VI Supreme Court and were limited to election
15 contest issues and jurisdiction of the local branches of
16 government.² Moreover, the issue of whether the BOE possesses
17 the discretion to refuse to execute its statutory duty of certifying
18 election results was not before the federal courts. Hence, a
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24 ² An "election contest" occurs once the election goes past the
25 regular administrative procedures of counting the votes. An election
26 contest is remedial in nature, in which a losing candidate seeks to
27 have the certified result overturned because of an election
28 irregularity.

mandamus order is appropriate.

Historically, courts grant accelerated requests when holding proceedings that involve election issues that affect the public's interest in the integrity and transparency of the voting processes. Even the appearance of impropriety undermines the public's faith that the process is fair. The Plaintiff-Petitioner has no other means of timely relief and the public interest dictates that the BOE be required to abide by the laws that define the boundaries of its discretion and to certify the results of the April 8, 2017 Special Election without further delay.

IV. Conclusion

The Petitioner respectfully requests that this Court grant her request for mandamus relief. The Defendants have a plainly defined statutory duty to certify the April 8, 2017 election results. The Petitioner requests that this Court either enter an order requiring the Superior Court in *Saraw v. Watlington, et. al.*, to rule forthwith on the Plaintiff-Petitioner's Motion requesting for expedited mandamus and declaratory relief; or, 2) to enter an order instructing the BOE, specifically, Arturo Watlington, Ivy Moses, Alecia Wells, Lydia Henricks, Maurice Donovan, Carla Joseph, Diane

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Magras-Urena, to certify the results of the April 8, 2017 Special
Election without further delay.

July 1, 2017

_____/s/ Terri Griffiths_____

Terri Griffiths
Attorney for PLAINTIFF/ PETITIONER
JANELLE K. SARA UW
POB 8647
St. Thomas, VI 00801
(340) 998-8830
Terri@Griffiths-Law.com

CERTIFICATION

I hereby certify that on the 1ST day of JULY, 2017 I provided
copies of this Petition to be served electronically as agreed by the
parties on the following:

Julita K. De Leon, Esq.
Attorney for Board of Election
5600 Royal Dane Mall, Suite 203
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St. Thomas, VI 00804

Ariel Marie Smith-Francois, Esq.
Carol Thomas-Jacobs, Esq.
Assistant Attorneys General
34-38 KONGENS GADE
GERS BLDG
ST. THOMAS, VI 00802

07/01/2017

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____/s/ Terri Griffiths_____

TERRI GRIFFITHS
Attorney at Law

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CLERK OF THE COURTSUPERIOR COURT OF THE U. S. VIRGIN ISLANDS
DIVISION ST. THOMAS & ST. JOHN

JANELLE K. SARA UW

CIV. NO. 2017/ 227

SUPERIOR COURT

17 MAY 18 AM 11:57

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V.

CAROLYN FAWKES, SUPERVISOR OF THE
BOARD OF ELECTIONS, ARTURO
WATLINGTON, IVY MOSES, ALECIA
WELLS, LYDIA HENRICKS, MAURICE
DONOVAN, CARLA JOSEPH, DIANE
MAGRAS-URENA.ACTION FOR DECLARATORY
AND MANDAMUS RELIEF**EXPEDITED MOTION FOR A WRIT OF MANDAMUS**

Now comes, JANELLE K. SARA UW, through the undersigned, who petitions this Court for a writ mandating the VI Board of Elections members to certify the results of the April 8, 2017 Special Election.

I. Factual Background

Kevin A. Rodriquez ran as a candidate for a seat in the 32nd Legislature. Rodriquez submitted his nomination petition to the VI Board of Elections claiming he was eligible to run for office in the US Virgin Islands as a "bona-fide" resident of the US Virgin Islands. After the election and prior to the Senators-elect taking the oath of office, Rodriquez's bankruptcy documents were emailed to Brigitte Berry. The Tennessee Bankruptcy documents reflected that on January 26, 2015, Rodriquez submitted sworn statements to the Middle

TERRI GRIFFITHS
Attorney at Law

07/01/2017

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1 District of Tennessee Court in a bankruptcy proceeding stating that he had lived
2 nowhere but Tennessee in the three (3) years prior to his signature. Berry
3 immediately notified the VI Board of Elections, who certified Rodriquez despite
4 Rodriquez's sworn allegations that he had not lived anywhere but Tennessee for
5 the last three years. But see, 18 VIC § 47(8) (duty to investigate and report).
6

7 Subsequently, Berry and Janelle Sarauw filed suit in the Superior Court of
8 the Virgin Islands. In the suit it was established that although Rodriquez was
9 born in the Virgin Islands, he abandoned this domicile when married, purchased
10 a home with his wife and raised his children in Tennessee. Rodriquez then
11 claimed that he perjured himself in the Tennessee bankruptcy proceedings.
12

13 On January 8, 2017, this Court held that Rodriquez was not eligible to run
14 as a candidate because he did not meet the definition of resident as
15 contemplated by the Revised Organic Act, Section 6(b). This Court also held
16 that Rodriquez could not be administered the oath and take a seat in the 32nd
17 Legislature. On January 9, 2017, fourteen (14) individuals were sworn in and
18 took their seats in the 32nd Legislature.
19

20 Rodriquez then initiated suit against the newly elected 32nd VI Legislature
21 and its President in the District Court of the US Virgin Islands seeking
22 affirmative injunctive relief claiming that only the legislature could determine
23 whether he was qualified to run for a senate seat. Rodriquez also successfully
24 moved to remove the Sarauw and Berry case to the federal venue. On
25 February 7, 2017, the VI District Court dismissed the suits, and invited the
26 Governor of the US Virgin Islands to call for a special election. On February 7,
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Attorney at Law

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1 2017, Governor Kenneth E. Mapp executed a proclamation calling for a special
2 election.

3 On March 8, 2017, thirty days later, Rodriquez filed a notice of appeal.
4 On Sunday, March 12, 2017, almost six (6) weeks after the Governor called for
5 a special election, Rodriquez asked the District Court to stay the Governor's
6 proclamation calling for a special election, which had been scheduled for April 8,
7 2017. Both the District Court and the Third Circuit denied Rodriquez' Motions
8 for a Stay of the Special Election.
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11 On April 8, 2017, a special election was held and Janelle K. Sarauw was
12 the undisputed winner. Pursuant to Title 18, Section 47(9), the BOE members
13 are required to compute the returns and certify the results to the Supervisor of
14 Elections in 15 days.¹ The BOE did not certify the election results and
15 continues to refuse to execute its duty.
16

17 **II. Issue Presented.**

18 Whether the Board of Elections Board Members have any power
19 except to perform the ministerial duty of certifying the April 8, 2017
20 special election.
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26 ¹ 18 VIC § 47(9) provides:

27 receive from election officers the returns of all primaries and elections, canvass, and
28 compute the returns, and certify, no later than fifteen days following the primary or
election, the results thereof to the Supervisor of Elections;

1 **III. Applicable Law & Argument**

2 **A. The Court has original jurisdiction to provide mandamus relief.**

3 "[M]andamus relief is an extraordinary remedy and should only be issued
4 if there are compelling circumstances." *O'Reilly v. Bd. of Elec.*, 61 V.I. 118
5 (Super. Ct. 2014).
6

7 **B. Sarauw has satisfied the elements of Mandamus Relief.**

8 In order to obtain relief, the Petitioner must establish:
9

- 10 (1) there is no other adequate means to obtain the relief sought;
11 (2) a clear and indisputable right; and,
12 (3) the writ is not inappropriate under the circumstances.
13

14 *Cheney v. U.S. Dist. Court for the Dist. of Columbia*, 542 U.S. 367, 380-381
15 (2004); *In re Richardson*, 1 V.I. 301, 350 (D.V.I. 1936) (that "[a] petition for
16 writ of mandamus is the proper legal action to correct errors made by the
17 Elective Boards").
18

19 The Board of Elections members do not possess the power to refuse to
20 perform the mandatory ministerial certification of the April 8, 2017 Special
21 Election. See, Title 18, Section 47(9). It is not unusual for courts to issue
22 mandamus to compel an elections board to certify an election. One case
23 involved a board's attempt to certify a winning candidate who everyone knew
24 died before election and the Board's subsequent attempt to appoint a
25 replacement. *Madden v. Board of Election Com'rs of City of Boston*, 146 N.E.
26 280 (Mass. 1925) (issued writ to certify election for second highest candidate).
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1 Second, Sarauw was the winning candidate of the April 8, 2017 Special
2 Election; thus, she has a clear and indisputable right to request mandamus
3 relief. *Hansen v. O'Reilly*, 62 V.I. 494 (V.I. 2005) (standing discussion).

4
5 Third, mandamus relief is appropriate because the Defendants have a
6 statutory duty to certify the results of the special election. Pursuant to Section
7 47(9) Defendants are required to compute election returns and certify the
8 results within 15 days. It is appropriate to compel Defendants to exercise the
9 ministerial act of certifying the winners of the April 8, 2017 special election.
10 *See also, Goff v. Kimbrel*, 849 P.2d 914, 917 (Colo. Ct. App. 1993) (stating that
11 "mandamus is proper when a canvassing board refused to perform its duty to
12 certify an election."). It is the courts who have oversight prior to the conclusion
13 of the election process. *Estrada v. Adame*, 951 S.W.2d 165 (Tex. 1997) (when
14 elector is "certified as the *winner and sworn into office, the election process*
15 *[is] over. . .* " emphasis added).

16 17 18 **IV. Conclusion**

19 The Plaintiff/Petitioner respectfully requests that this Court grant her
20 request for mandamus relief. She has a right to mandamus relief, the
21 Defendants have a plainly defined statutory duty to certify the April 8, 2017
22 election results; and, there is no other adequate remedy available to her. The
23 Petitioner requests that this Court enter an order requiring the Defendants to
24 file a response to this Motion on an expedited basis.
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May 18, 2017

[Signature]

Terri Griffiths
Attorney for PLAINTIFF/ PETITIONER
JANELLE K. SARAUF
POB 8647
St. Thomas, VI 00801
(340) 998-8830
Terri@Griffiths-Law.com

CERTIFICATION

I hereby certify that on the 18TH day of MAY, 2017 I provided copies of this motion to the process server to be hand delivered on the following:

Julita K. De Leon, Esq.
Attorney for Boards
5600 Royal Dane Mall, Suite 203
POB 953
St. Thomas, VI 00804

**Ariel Marie Smith-Francois, Esq.
Carol Thomas-Jacobs, Esq.
Assistant Attorneys General
34-38 KONGENS GADE
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ST. THOMAS, VI 00802**

07/01/2017

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1 CAROLYN FAWKES
2 Elections System of the Virgin Islands
3 9200 Lockhart Garden Shopping
4 St. Thomas, VI 00802

5 Also copied:

6 ARTURO WATLINGTON
7 IVY MOSES
8 ALECIA WELLS
9 LYDIA HENRICKS
10 MAURICE DONOVAN
11 CARLA JOSEPH
12 DIANE MAGRAS-URENA-

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_____/s/ Terri Griffiths

TERRI GRIFFITHS
Attorney at Law

FILED

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17 MAY 18 AM 11:57

SUPERIOR COURT

IN THE SUPREME COURT
OF THE VIRGIN ISLANDS
JUDICIAL OFFICE
ST. JOHN'S, VIRGIN ISLANDS

IN RE: [illegible]

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CLERK OF THE COURTSUPERIOR COURT OF THE U. S. VIRGIN ISLANDS
DIVISION ST. THOMAS & ST. JOHN

JANELLE K. SARA UW

CIV. NO. 2017/227

V.

CAROLYN FAWKES, SUPERVISOR OF THE
BOARD OF ELECTIONS, ARTURO
WATLINGTON, IVY MOSES, ALECIA
WELLS, LYDIA HENRICKS, MAURICE
DONOVAN, CARLA JOSEPH, DIANE
MAGRAS-URENA.ACTION FOR DECLARATORY
AND MANDAMUS RELIEF**SUPPLEMENTAL EMERGENCY MOTION FOR
MANDAMUS RELIEF OR ANY OTHER INJUNCTIVE RELIEF
AND CONSOLIDATION WITH TRIAL ON THE MERITS**

Now comes, JANELLE K. SARA UW, through the undersigned, who requests emergency mandamus relief, and other appropriate emergency injunctive relief, and in the interests of expediency respectfully requests that the Court consolidate the hearing with a trial on the merits. The Defendants are members and a Supervisor of the Board of Elections, St. Thomas & St. John District (hereinafter BOE).

The BOE is statutorily required to certify the results of the April 8, 2017 Special Election and the refusal warrants correction by writ of mandamus. Without the issuance of the writ, a failure of justice would result. Sara uw respectfully requests that this Court hold an emergency hearing this week.

TERRI GRIFFITHS
Attorney at Law

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I. Factual Background

Kevin A. Rodriquez ran as a candidate for a seat in the 32nd Legislature. Rodriquez submitted his nomination petition to the Board of Elections claiming he was eligible to run for office in the US Virgin Islands as a "bona-fide" resident of the US Virgin Islands.¹

After the election and prior to the Senators-elect taking the oath of office, Rodriquez's bankruptcy documents were emailed to Brigitte Berry. The Tennessee Bankruptcy documents reflected that on January 26, 2015, Rodriquez submitted sworn statements to the Middle District of Tennessee Court in a bankruptcy proceeding stating that he had lived nowhere but Tennessee in the three (3) years prior to his signature. Berry immediately notified the BOE, who certified Rodriquez despite Rodriquez's sworn allegations that he had not lived anywhere but Tennessee for the last three years. Under the statute, the BOE could not do anything but certify Rodriquez one of the winners.

The BOE's power to investigate election fraud ended five (5) days after the General Election. 18 VIC § 92. Consequently, Berry and Janelle Sarauw also had no option but to file suit in the Superior Court of the Virgin Islands bringing what is commonly referred to as *quo warranto* proceedings. In the

¹ Carolyn Fawkes, BOE Supervisor, testified that she conducted an investigation. Although she relied on and provided three (3) years of Rodriquez's tax returns at trial, the returns were not properly authenticated.

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1 suit it was established that although Rodriquez was born in the Virgin Islands,
2 he abandoned this domicile when married, purchased a home with his wife and
3 raised his children in Tennessee. Rodriquez claimed that he perjured himself in
4 the Tennessee bankruptcy proceedings when he swore that he lived nowhere
5 but Tennessee in the last three (3) years. Rodriquez committed a fraud in one
6 or both jurisdictions of Tennessee and the Virgin Islands.

7
8 On January 8, 2017, the VI Supreme Court held that Rodriquez was not
9 eligible to run as a candidate because due to his fraud on the Tennessee Court
10 he could not meet the definition of resident as contemplated by the Revised
11 Organic Act, Section 6(b). See *Sarauw v. Fawkes*, S. Ct. Civ. No. 2017-0005,
12 --- V.I. ----, 2017 WL 77123, at *7 (V.I. Jan. 8, 2017). As a result, the
13 Court also held that Rodriquez could not be administered the oath and take a
14 seat in the 32nd Legislature. On January 9, 2017, fourteen (14) individuals were
15 sworn in and took their seats in the 32nd Legislature. Rodriquez did not take a
16 seat and St. Thomas has been without its seventh senator.

17
18
19 Rodriquez then initiated suit against the newly elected 32nd VI Legislature
20 and its President in the District Court of the US Virgin Islands seeking
21 affirmative injunctive relief claiming that only the legislature could determine
22 whether he was qualified to run for a senate seat. However, the Legislature did
23 not consider Rodriquez a member since he did not take the oath of office.
24 Rodriquez also successfully removed the Sarauw matter to the federal forum.
25 On February 7, 2017, the District Court dismissed the suits and invited the
26 Governor of the US Virgin Islands to call for a special election. On February 7,
27
28

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1 2017, Governor Kenneth E. Mapp executed a proclamation calling for a special
2 election.

3 On March 8, 2017, thirty days later, Rodriquez filed a notice of appeal.
4 On Sunday, March 12, 2017, almost six (6) weeks after the Governor called for
5 a special election, Rodriquez asked the District Court to stay the Governor's
6 proclamation calling for a special election, which had been scheduled for April 8,
7 2017. Both the District Court and the Third Circuit denied Rodriquez' Motions
8 for a Stay of the Special Election.
9

10 The 32nd Legislature allocated funds to hold the special election held on
11 April 8, 2017. The BOE announced that Janelle K. Sarauw was the undisputed
12 winner. Pursuant to Title 18, Section 47(9), the BOE members are required to
13 compute the returns and certify the results to the Supervisor of Elections in 15
14 days.² The BOE did not certify the election results and continues to refuse to
15 execute its duty. See, 5 VIC § 1361.³
16

17 The Plaintiff filed the instant case on May 18, 2017 and filed a First
18 Amended Complaint the following day. With the Complaint, the Plaintiff filed an
19

20 ² Title 18, Section 47(9) provides:

21 receive from election officers the returns of all primaries and elections, canvass,
22 and compute the returns, and certify, no later than fifteen days following the
23 primary or election, the results thereof to the Supervisor of Elections;

24 ³ 5 VIC 1361 (b) When an order under subsection (a) of this section is
25 directed to a public officer or body commanding the performance of any public
26 duty specially enjoined by law, if it appears to the court that such officer or any
27 member of such body has refused or neglected to perform the duty so enjoined
28 without just excuse, the court may imprison, or impose a fine of not more than
\$1,000 upon, every such officer or member of such body for each refusal.

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1 expedited motion requesting a writ of mandamus. On May 23, 2017, Attorney
2 Julita de Leon filed a notice of appearance on behalf of all of the Defendants
3 (collectively referred to as BOE). This Court has not yet entered an order or
4 scheduled a date for a hearing.
5

6 **II. Issues Presented.**

- 7 1) Whether the BOE has any power except to perform the
8 ministerial duty of certifying the April 8, 2017 special election;
9 and,
10 2) Whether the BOE's certification of Rodriguez is revoked by
11 operation of law.
12

13 **III. Applicable Law & Argument**

14 **A. Justice Delayed is Justice Denied.**

15 A Writ of Mandamus is a request for affirmative injunctive relief and
16 proceedings are historically scheduled on an expedited basis. *Hansen v.*
17 *O'Reilly*, 61 VI 118 (Super. Ct. 2014) ("... mandamus relief would be
18 appropriate; since the Court would be in a difficult position to shape any
19 injunctive relief which would result in a solution to the problem, **without**
20 **creating undue delay**").⁴ In the above case, O'Reilly filed her Complaint on
21
22

23
24
25 ⁴ Mandamus-like relief is essentially an affirmative injunction and may be
26 granted pursuant to 5 V.I.C. § 1361(a) (1967) which provide:

27 Remedies formerly available by writ of mandamus to compel performance of
28 duties(a) In an appropriate action, or upon an appropriate motion in an action,
under the practice prescribed in the Federal Rules of Civil Procedure and in this

07/01/2017

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CLERK OF THE COURT

1 December 8, 2014 to bar the Board from recounting the write-in votes for
2 Hansen. On December 9, 2014, O'Reilly filed her Motion for Mandamus Relief
3 and/or Other Equitable Relief. The Superior Court scheduled a hearing matter
4 for December 11, 2014, by Order entered December 10, 2014, which was
5 continued to December 15, 2014. Hansen attempted to remove the case to
6 District Court; however, at the hearing O'Reilly removed her due process and
7 equal protection claims. To the extent that any of Plaintiff Janelle Sarauw's
8 claims could be construed to qualify for due process and equal protection
9 claims, she withdraws them. Sarauw has requested and is entitled to
10 expedited, emergency relief.
11
12

13 **B. Mandamus relief has long been available to compel the**
14 **certification of election results.**

15 Mandamus relief is the proper remedy in cases where an election
16 commission has already certified the results, thus leaving nothing to enjoin.
17 *Democratic Party of the Virgin Islands v. Board of Elections, St. Thomas-St.*
18 *John*, 649 F. Supp. 1549 (D.V.I.1986) (writ of mandamus issued); See also,
19 "[M]andamus relief is an extraordinary remedy and should only be issued if
20 there are compelling circumstances." *O'Reilly v. Bd. of Elec.*, 61 V.I. 118
21
22

23 _____
24 title, the district court may issue a mandatory order to any inferior court,
25 corporation, board, officer or person, to compel the performance of an act
26 which the law specially enjoins as a duty resulting from an office, trust, or
27 station. Although such order may require the court, corporation, board, officer,
28 or person to exercise its or his judgment, or proceed to the discharge of any of
its or his functions, the order shall not control judicial discretion. The order shall
not be issued in any case where there is a plain, speedy, and adequate remedy
in the ordinary course of the law.

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1 (Super. Ct. 2014). Mandamus has long been found by courts as the
2 appropriate avenue to compel the performance of statutorily required
3 ministerial duties of counting ballots and certifying the election results.
4 *Sorensen Television Systems, Inc. v. Guam Superior Court*, 2006 WL 3826971
5 (Guam Terr. 2006) (collecting cases); *Accord, State of Ohio v. The Franklin*
6 *County Board of Elections*, 65 Ohio St.3d 5 (1992); *Williamson v. Kempf*, 574
7 S.W.2d 845 (Tex. App. 1978); *Leary v. Jones*, 51 Colo. 185 (Colo. 1911);
8 *Borgeois v. Fairchild*, 81 Miss. 708 (1903); *Working v. Jefferson County*
9 *Election Commission*, 152 So. 3d 1230, 1234-35 (Ala. 2013) (defines
10 ministerial).
11
12

13 Thus, Sarauw has properly sought mandamus relief.
14

15 **C. Sarauw has satisfied the elements of Mandamus Relief.**
16

17 In order to obtain relief, Sarauw must establish:
18

- 19 (1) there is no other adequate means to obtain the relief sought;
20 (2) a clear and indisputable right; and,
21 (3) the writ is not inappropriate under the circumstances.

22 *Cheney v. U.S. Dist. Court for the Dist. of Columbia*, 542 U.S. 367, 380-381
23 (2004); *In re Richardson*, 1 V.I. 301, 350 (D.V.I. 1936) (that "[a] petition for
24 writ of mandamus is the proper legal action to correct errors made by the
25 Elective Boards").

26 As a threshold matter, the BOE does not possess the power to refuse to
27 perform the mandatory ministerial certification of the April 8, 2017 Special
28

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1 Election. See, Title 18, Section 47(9). This is the same in a majority, if not all,
2 jurisdictions. Mandamus is the only avenue to compel an elections board to
3 certify an election. See, Section B above. In this case, upon information and
4 belief, Rodriquez has vexatiously delayed the proceedings in an effort to
5 provide the Democrat Party the opportunity to appoint him or his successor
6 pursuant to Title 2, Section 111(b).⁵ This type of manipulation has been tried
7 before and rejected. In *Madden*, an election board attempted to certify a
8 winning candidate who everyone knew died before election and then appoint a
9 replacement as opposed to certifying the second highest candidate. *Madden v.*
10 *Board of Election Com'rs of City of Boston*, 146 N.E. 280 (Mass. 1925) (issued
11 writ to certify election for second highest candidate).

12
13
14 Second, Sarauw was the winning candidate of the April 8, 2017 Special
15 Election; thus, she has a clear and indisputable right to request mandamus
16 relief. *Hansen v. O'Reilly*, 62 V.I. 494 (V.I. 2005) (standing discussion).
17 Plaintiff Janelle Sarauw holds a beneficial interest in contrast to a member of
18 the public-at-large. See, *See Samuel v. Virgin Islands Joint Bd. of Elections*,
19 No. 2012-0094, 2013 WL 842946, at *3-4 (D.V.I. March 7, 2013) (discussion of
20 standing and injury-in-fact).
21
22

23
24 ⁵ Title 2, Section 111(b) provides: When the vacancy occurs within one year
25 prior to the general election, the President of the Legislature, upon the written
26 recommendation of the territorial committee of the political party of which the
27 previous office holder was a candidate, shall appoint the person so
28 recommended; Provided, however, That if the previous office holder was not a
candidate of a political party as defined by law, the Legislature by a two-thirds
majority of its members shall elect a person from said district, or at large, as
the case may be, to fill the vacancy.

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1 Third, mandamus relief is appropriate because the Defendants have a
2 statutory duty to certify the results of the special election. Pursuant to Section
3 47(9). Defendants are required to compute election returns and certify the
4 results within 15 days. It is appropriate to compel Defendants to exercise the
5 ministerial act of certifying the winners of the April 8, 2017 special election.
6 See, *Goff v. Kimbrel*, 849 P.2d 914, 917 (Colo. Ct. App. 1993) (stating that
7 "mandamus is proper when a canvassing board refused to perform its duty to
8 certify an election."). Public policy in our democratic system of government
9 requires rigorous adherence to the laws governing the election of public
10 officials.
11

12
13 **D. Emergency Injunctive Relief is Warranted.**

14 As a threshold matter, Sarauw requests that this Court consolidate the
15 hearing with a trial on the merits. VI. R. Civ. P. 65(a)(2). Consolidation avoids
16 having the same evidence presented both at the preliminary injunction stage
17 and later at trial at the permanent injunction stage. Thus, such a consolidation
18 generally saves considerable time at trial by eliminating unnecessary
19 evidentiary redundancy.
20

21 It is well established in the Virgin Islands that [t]o grant a preliminary
22 injunction, the Superior Court must consider four factors: (1) whether the
23 movant has shown a reasonable probability of success on the merits; (2)
24 whether the movant will be irreparably injured by denial of the relief; (3)
25 whether granting preliminary relief will result in even greater harm to the
26 nonmoving party; and (4) whether granting the preliminary relief will be in the
27
28

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1 public interest.

2 **1. Sarauw has established a reasonability of success on the**
3 **merits.**

4 As set forth in Section III(B), the BOE's statutory duty to certify the
5 election results is a ministerial duty for which it has no discretion. Thus,
6 Sarauw has established a reasonable success on the merits.

7
8 **2. Sarauw will be irreparably harmed.**

9 Sarauw will suffer irreparable harm as money damages cannot
10 compensate her for the BOE's refusal to certify the results of the April 8, 2017
11 Special Election.

12
13 **3. The BOE members cannot claim harm.**

14 Sarauw moves for affirmative injunctive relief to compel the BOE to
15 execute its statutory duty to certify the results of the April 8, 2017 Special
16 Election. This duty is without discretion and the BOE members are subject to a
17 fine and imprisonment for refusal to execute this duty. 5 VIC § 1361(b). See,
18 fn. 3. The BOE is in no position to claim harm.

19
20 **4. The Public Interest Weighs in Favor of Affirmative Injunctive**
21 **Relief.**

22 Here, many courts give weight to allegations that non-parties will be
23 injured either through the grant or the denial of a preliminary injunction
24 whenever such claims are raised by the litigants. See *e.g., Grossbaum v.*
25 *Indianapolis-Marion County Bldg. Auth.*, 63 F.3d 581, 585 (7th Cir. 1995)
26 (stating that inquiring into the public interest means examining "the effect that
27 granting or denying the injunction will have on non-parties"); see *also Reese v.*
28

1 *City of Columbus*, 71 F.3d 619, 622 n.2 (6th Cir. 1995).

2 Both the District Court and the Third Circuit court denied Rodriguez's
3 motions to stay the April 8, 2017 Special Election called by the Governor
4 pursuant to Title 2, Section 111.⁶ The BOE is statutorily required to count the
5 votes and certify the election results. 18 VIC § 47(9). Here, the government
6 suffers the irreparable harm of denying the public interest in the enforcement of
7 its laws." *Bryan v. Fawkes*, 61 V.I. 416 (VI 2014) (internal citations omitted).
8 Even more fundamentally, elections cannot be free and equal unless supported
9 by public confidence; when once the notion prevails that confidence cannot be
10 placed in the stability of elections, their power and usefulness is destroyed.⁷

11 The public interest weighs in favor of an order affirmatively ordering the BOE
12 to certify the results of the April 8, 2017 Special Election. The Governor issued
13 the proclamation calling for the election, the 32nd Legislature allocated the

14
15
16
17 ⁶ § 111 Vacancies; special election; appointment

18 (a) If prior to the one year immediately preceding the date of the next general election, a
19 vacancy occurs in the office of a member of the Legislature, the Governor shall call a special
20 election in said district, or at large, as the case may be, within thirty (30) days following the
21 day on which the vacancy occurs. Said special election shall be held no later than sixty (60)
22 days after the call, and the person elected shall hold office for the remainder of the
23 unexpired term of his predecessor.

24 ⁷ R. Michael Alvarez, Lonna Rae Atkeson and Thad E. Hall, ARE U.S. ELECTIONS 'RIGGED?' HERE'S HOW TO
25 HELP VOTERS BELIEVE THAT THEY'RE NOT, THE WASHINGTON POST, (September 28, 2016):

26 Part of the reason that U.S. democracy is so stable — and that citizens accept election results
27 instead of, say, rioting and setting the Capitol on fire — is that most American voters are confident
28 that their ballots are counted accurately in our elections. That's what we've found in our research
over the past decade. And that confidence can be improved or harmed by how state and local
election officials manage elections — whether their favored candidates win or lose.

https://www.washingtonpost.com/news/monkey-cage/wp/2016/09/28/are-u-s-elections-rigged-heres-how-to-help-voters-feel-confident-that-theyre-not/?utm_term=.95e4be770c97 (last visited March 19, 2017)

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1 funds for the election and the BOE executed its duties stopping short of
2 certifying the results.

3 **E. Declaratory and Mandamus Relief is appropriate to revoke the**
4 **BOE's certification of Rodriquez in the November 8, 2016 General**
5 **Election.**

6 The Courts have oversight prior to the conclusion of the election process.
7
8 *Estrada v. Adame*, 951 S.W.2d 165 (Tex. 1997) (when elector is "certified as
9 the winner and sworn into office, the election process [is] over. . . " emphasis
10 added). Rodriquez did not take the oath of office and was not seated as a
11 member of the 32nd Legislature. See, *Imbrie v. Marsh*, 68 A.2d 761 (N.J.
12 App.Div.1949), *aff'd*, 3 N.J. 578, 71 A.2d 352 (1950) (the history and meaning
13 of loyalty oaths). The Governor called for a special election, the 32nd
14 Legislature allocated the funds to hold the special election, and the BOE
15 administered and conducted the April 8, 2017 special election.
16

17 The only act missing to close the long and sordid history of this dispute is
18 the judicial formality of declaring the BOE's certification of Rodriquez null
19 and/or void. There is a recognized judicial right to order cancellation of election
20 certification when there is fraud related to eligibility. See *Thompson v.*
21 *Robinson*, 101 N.M. 703, 705, 688 P.2d 21, 23-24 (1984) (by deceiving voters
22 regarding his actual place of residence the candidate committed a fraud);
23 *Osborn v. O'Barr*, 401 So.2d 773 (Ala.1981) (election declared void after
24 election winner was ineligible because of lack of residency).
25
26

27 Further, mandamus has also been appropriately used to "annul or restrain
28 administrative action already taken which is in violation of law." *Bodinson Mfg.*

TERRI GRIFFITHS
Attorney at Law

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1 *Co. v. Cal. Employment Comm'n*, 109 P.2d 935, 941 (Cal.1941).

2 **IV. Conclusion**

3 Sarauw respectfully requests that this Court grant her request for
4 emergency mandamus relief and enter an order instructing the BOE to certify
5 the results of the April 8, 2017 Special Election. Sarauw has standing as the
6 winning candidate of the April 8, 2017 Special Election and the Defendants
7 have a plainly defined statutory duty to certify the April 8, 2017 election.
8 Sarauw will be prejudiced with any further undue delay. Upon information and
9 belief, the Democrat Party, via Kevin Rodriguez, seeks to stall the resolution
10 of this matter in an effort to appoint a senator pursuant to Title 2, Section
11 111(b).

12 The adequate and fair remedy is to expedite the trial of this action.

13
14
15
16
17
18 May 30, 2017



19 Terri Griffiths
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CERTIFICATION

I hereby certify that on the 30TH day of MAY, 2017 I provided copies of this motion to the process server to be hand delivered on the following:

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____/s/ Terri Griffiths_____

IN THE SUPREME COURT
OF THE VIRGIN ISLANDS
FILED
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SUPREME COURT
OF THE VIRGIN ISLANDS
2017 MAY 30 PM 12:05

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CLERK OF THE COURT

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN

JANELLE K. SARAUF,

Plaintiff,

vs.

CAROLYN FAWKES, SUPERVISOR OF
 ELECTIONS, ARTURO WATLINGTON,
 IVY MOSES, ALECIA WELLS, LYDIA
 HENDRICKS, MAURICE DONOVAN, &
 DIANE MAGRAS-URENA,

Defendants.

Civil No.
ST-17-CV-227**T-R-A-N-S-C-R-I-P-T****(Declaratory Relief/Oral Arguments)****June 22, 2017**

BEFORE: HONORABLE KATHLEEN MACKAY
 Judge Presiding

APPEARANCES: TERRI GRIFFITHS, ESQ.
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VERONICA HANDY, ESQUIRE
CLERK OF THE COURT**Colloquy**

1 THE CLERK: Good morning.
2 Civil non-jury calendar for Thursday, June
3 22nd, 2017. Number one on the calendar,
4 **Janelle K. Sarauw versus Carolyn Fawkes,**
5 **Supervisor of the Board of Election,**
6 **Arturo Watlington, Ivy Moses, Alecia**
7 **Wells, Lydia Hendricks, Maurice Donovan,**
8 **Carla Joseph, and Diane Magras-Urena.**

9 ATTORNEY GRIFFITHS: Good
10 morning, Your Honor. Terry Griffiths on
11 behalf of Janelle Sarauw.

12 THE COURT: Good morning.

13 ATTORNEY DE LEON: Good
14 morning, Your Honor. Julita de Leon on
15 behalf of the defendants.

16 THE COURT: Good morning.
17 Well, I think you both -- this matter is
18 on today, first of all, for status
19 conference although you both know that
20 much has changed since I scheduled this
21 for a status conference in that the Third
22 Circuit decision came down since then. I
23 considered postponing today's status
24 conference in light of the Third Circuit's
25 decision, but I wanted to give the

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CLERK OF THE COURT**Colloquy**

1 plaintiff an opportunity to be heard,
2 especially where in the defendants'
3 filings they urged the Court to stay the
4 matter -- stay this matter until the
5 Legislature has acted. The defendants
6 didn't file a motion to stay but they did
7 urge that in their responses to the
8 plaintiff's motions. So I think that's
9 the best place for us to start today.

10 Attorney Griffiths, what's your
11 position on that issue?

12 ATTORNEY GRIFFITHS: Well,
13 Your Honor, the motion for stay has not
14 been properly briefed; however, since
15 Plaintiff Sarauw filed her expedited
16 motion for emergency relief on May 18th I
17 came today prepared to give oral argument
18 on the motion for emergency relief.

19 THE COURT: But is this a
20 good use of the attorneys' time and the
21 Court's time to entertain Miss Sarauw's
22 motion when we're at a juncture where the
23 Third Circuit has since entered its
24 decision?

25 ATTORNEY GRIFFITHS: I can

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CLERK OF THE COURT**Colloquy**

1 certainly address the Third Circuit's
2 opinion in my motion -- I mean, in my oral
3 argument for the motion, but -- and I have
4 in my oral argument both the District
5 Court opinion and the Third Circuit Court
6 opinion and would do so in oral argument.

7 THE COURT: Okay.

8 ATTORNEY GRIFFITHS: Unless
9 you would like me to do it now.

10 THE COURT: I meant you meant
11 oral argument now.

12 ATTORNEY GRIFFITHS: Yes, I'm
13 ready for oral argument now. This motion
14 has been pending -- this expedited motion
15 has been pending now for going on six
16 weeks. So -- I truly believe it's the
17 Court's duty, especially on the first
18 issue, whether the Board of Elections has
19 of the discretion not to certify an
20 election. If that's a discretionary power
21 of the Board that's still in the Court's
22 -- that's still in this lawsuit, that is
23 not in the legislature. That's the
24 election contest in the legislature and
25 the eligibility or whether Rodriquez is

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CLERK OF THE COURT**Colloquy**

1 eligible or not eligible is now with the
2 Legislature. But the District Court and
3 the Third Circuit gave no credence or
4 respect to the two opinions of the V.I.
5 Supreme Court.

6 The District Court and the Third
7 Circuit gave advisory opinions because
8 they can't give affirmative injunctive
9 relief and tell the Legislature what to do
10 or what not to do. So we still have the
11 issue of the Board of Elections not doing
12 its job, not following a statute, and
13 deciding its just not going to the follow
14 the section that requires it to certify
15 the winning person of the April 8th, 2017
16 election.

17 The Board's not -- in
18 certification they seem to make the
19 argument that they'd be choosing the
20 winner or causing a conundrum and that's
21 not really true, because it's not the
22 Board's discretion to select the person
23 who is gonna take the seat in the 32nd
24 Legislature. The issue is, does the Board
25 of Election get to decide when it follows

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CLERK OF THE COURT**Colloquy**

1 the law or doesn't follow the law? So I
2 would like to give my oral argument. I'll
3 be brief. I've consolidated some of the
4 issues. I'd say five to seven minutes.

5 THE COURT: Attorney de Leon,
6 are you prepared to -- for us to do this
7 today? It shouldn't be too difficult.

8 ATTORNEY DE LEON: Well, Your
9 Honor, if I may?

10 THE COURT: Go ahead.

11 ATTORNEY DE LEON: First of
12 all, there are three or four matters
13 pending before the Court. There is the
14 petition, there is a -- there is a
15 complaint for declaratory judgment, and
16 there is a motion for mandamus and
17 injunctive relief. So, if we're -- then
18 we should address everything, because I'm
19 -- it is inconsistent for plaintiff to
20 come before the Court, file a writ -- a
21 petition for a writ of mandamus and say
22 "Wait a minute, I don't want to deal with
23 it let me deal with a motion." We either
24 deal with the petition -- because she file
25 a writ. She filed a petition for a writ

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CLERK OF THE COURT**Colloquy**

1 of mandamus.

2 ATTORNEY GRIFFITHS: I --

3 ATTORNEY DE LEON: It is
4 still pending.

5 ATTORNEY GRIFFITHS: I'm
6 ready to address that.

7 ATTORNEY DE LEON: It is
8 still pending. This is -- this is --
9 there is no motion that goes before a
10 petition for a writ of mandamus. It's
11 either she is entitle to it, she'll get
12 her relief if she gets it, or she doesn't
13 get it. But to pick and choose at this
14 point what she's gonna deal with I think
15 it's unfair. There are three -- there are
16 three pleadings pending before this Court,
17 and the Third Circuit opinion changed
18 everything regarding those pleadings. So
19 she can't come to court this morning and
20 say "By the way, I'm not -- I'm not gonna
21 deal with A and B but I'll deal with C."
22 I object to it. She either deal with all
23 three -- we'll be here dealing with all
24 three or she -- or we don't deal with
25 anything until the Legislature acts.

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CLERK OF THE COURT**Colloquy**

1 THE COURT: But would you
2 really prefer, Attorney de Leon -- I mean,
3 I know you prefer for a stay, but are you
4 suggesting we should go ahead then today
5 with all four?

6 ATTORNEY GRIFFITHS: I'm
7 ready, Your Honor.

8 THE COURT: Attorney
9 Griffiths.

10 ATTORNEY DE LEON: Your Honor
11 -- it's my turn.

12 THE COURT: Attorney
13 Griffiths, you can't --

14 ATTORNEY DE LEON: Your Honor
15 --

16 THE COURT: Attorney de Leon,
17 take a deep breath. Calm down. Calm
18 down.

19 ATTORNEY DE LEON: Okay. I'm
20 sorry. I'm sorry. I'm calm. I'm calm.
21 Your Honor, we filed our motion and gave
22 the -- we argued two things, either it be
23 dismissed because Rodriguez is not a party
24 and he should be, or in the alternative
25 the Court stay the matter. That is what

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CLERK OF THE COURT**Colloquy**

1 we argued in our motion. We didn't file a
2 motion just for a stay. Our argument is
3 it's either stayed or dismissed. It's
4 dismissed because Rodriquez is an
5 indispensable party and they failed to sue
6 him, and he's not here. Everything we
7 discuss here will affect him. He should
8 be here.

9 ATTORNEY GRIFFITHS: May I
10 respond, Your Honor?

11 THE COURT: Yes.

12 ATTORNEY GRIFFITHS: I'm
13 ready to address everything. The only --
14 the motion slash petition and the
15 supplemental, I'm ready to address those
16 issues. I have an opposition to both of
17 those briefings from the Board of
18 Elections. That's all I have. I've never
19 been served with any motion to dismiss on
20 their behalf. So if it's been filed I've
21 never been served. However, we're ready
22 to answer every single thing we filed,
23 every argument we've made. I'm ready for
24 oral argument. It's been five weeks.

25 ATTORNEY DE LEON: Your

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CLERK OF THE COURT**Colloquy**

1 Honor, our motion speaks for itself. Our
2 motion is an opposition and we ask that
3 the matter be stayed or dismissed. I
4 don't think we need to title our motion a
5 motion to dismiss at this point. The
6 plaintiff filed a petition and a
7 memorandum of law in support of that
8 petition. We filed an answer -- we're
9 actually confused as to who she is suing
10 because she has the Board -- the name --
11 she just has names. We don't know whether
12 they are being sued in their capacity as
13 Board members or citizens. So we're here
14 on the assumption that she is actually
15 suing them as Board members. So we -- she
16 filed a petition, she petition for a --
17 the Court for a writ of mandamus, and then
18 she filed a memorandum. We filed an
19 answer and we filed an opposition which
20 says it should be dismissed, that's one of
21 the things we stated in there.

22 The second thing she -- they
23 filed a complaint and they ask for
24 declaratory judgment. We also said it
25 should be dismissed. A week and a half

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CLERK OF THE COURT**Colloquy**

1 later -- and the motion has not been
2 pending for six weeks. The motion has
3 been pending for roughly two weeks. Let
4 the record reflect that. Their motion for
5 emergency relief has been pending for
6 roughly two weeks. Let the record reflect
7 that. They file that, we filed a motion
8 opposing it and ask that it be dismissed
9 whatever it is they are asking for, that
10 that motion be dismissed or in the
11 alternative be stayed because by then the
12 Third Circuit Court had issued its
13 opinion. And this is where we are.

14 THE COURT: Let me just say
15 that the complaint initiating this case
16 was filed on May 18th, and that's the day
17 the expedited motion for a writ of
18 mandamus was also filed, May 18th. And
19 then the supplemental emergency motion for
20 mandamus relief was filed on May 30th.

21 ATTORNEY DE LEON: Your
22 Honor, she -- they did not file a motion
23 for injunctive relief until after they
24 filed their motion for mandamus.

25 THE COURT: That's what I

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12

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CLERK OF THE COURT**Colloquy**

1 just said. It was filed on May 30th and
2 the initiating petition and their petition
3 for mandamus were filed on May 18.

4 ATTORNEY DE LEON: Okay.

5 ATTORNEY GRIFFITHS: May Your
6 Honor allow us five to seven minutes for
7 our oral arguments?

8 THE COURT: Yes, you can go
9 ahead. I'll take your arguments for
10 whatever it's worth. I mean, I really
11 think part of this is an exercise in
12 futility in light of the Third Circuit's
13 decision. It was issued after this case
14 was filed and it was issued after the
15 Court scheduled today's status conference,
16 and it changes the playing field to a
17 certain extent. But, if the parties are
18 only seeking five to seven minutes on
19 either side to make oral arguments, I'll
20 certainly hear them.

21 Go ahead, Attorney Griffiths.

22 ATTORNEY GRIFFITHS: Yes,
23 Your Honor, and -- is this working?
24 Sorry. Maybe I don't need it. If you'll
25 just bear with me. I was sick -- I've

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CLERK OF THE COURT**Colloquy**

1 been sick all week so I'm only breathing
2 through my mouth but I'll try to -- I'm
3 gonna have to slow it down so I can
4 breathe at the same time.

5 THE COURT: That's fine.
6 That's fine. Go ahead.

7 ATTORNEY GRIFFITHS: It's
8 Janelle Sarauw's position is the Board of
9 Elections lacks any power except to
10 perform ministerial duty of certifying a
11 winner of the April 8th --

12 THE COURT: Slow down a
13 little bit, please.

14 ATTORNEY GRIFFITHS: Oh.
15 Sure. Of the April 8th, 2017 Special
16 Election --

17 THE COURT: I'm sorry. Start
18 over. I really missed that first two
19 lines.

20 ATTORNEY GRIFFITHS: The
21 Board of Election lacks any power except
22 to perform the ministerial duty of
23 certifying the winner of the April 8th,
24 2017 Special Election. That's the first
25 issue in Miss Sarauw's position. There is

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CLERK OF THE COURT**Colloquy**

1 a second issue and that may be subject to
2 change given the Third Circuit opinion.
3 But we want to focus on the first issue.

4 Pursuant to Title 18 section
5 47(9) the Legislature in its wisdom did
6 not grant discretion to the Board of
7 Elections with respect to their statutory
8 obligation, and that's certifying an
9 election. The Board of Election members
10 are simply required to compute the returns
11 and certify the results in 15 days.

12 Further, any discretionary powers the
13 Board of Election does possess during the
14 election process statutorily disintegrate
15 five days after the election. That's
16 pursuant to Title 18 section 92.

17 THE COURT: Tell me that
18 again. Their statutory duty --

19 ATTORNEY GRIFFITHS: They
20 basically disintegrate. They have no
21 discretionary powers whatsoever after --
22 five days after an election. That's Title
23 18 section 92.

24 THE COURT: Okay.

25 ATTORNEY GRIFFITHS: In their

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VERONICA HANDY, ESQUIRE
CLERK OF THE COURT**Colloquy**

1 moving papers -- their opposition papers
2 the Board of Elections argument, one, is
3 essentially three arguments for the
4 position that it should not be ordered to
5 abide by Title 18 section 47(9) to certify
6 the elections.

7 The first argument is, the issue
8 should be addressed in election contest.
9 The Board of Elections is required to
10 perform a statutory duty of certifying the
11 winner of the April 8th, 2017 Special
12 Election. This issue is not about the
13 Board of Elections' abdication of its
14 statutory duty, and it's -- well, it is.
15 It's about the Board of Elections refusing
16 to follow the statutory law and instead
17 wanting to bring in the improprieties of
18 the election, and that's -- that's not
19 what this case is about, the
20 irregularities or the residency of Kevin
21 Rodriquez.

22 THE COURT: You're saying
23 that the -- you believe that the Board of
24 Election is --

25 ATTORNEY GRIFFITHS: They

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CLERK OF THE COURT**Colloquy**

1 should have certified the results of the
2 April 8th, 2017 --

3 THE COURT: I understand
4 that's your overriding argument, but are
5 you -- did you just say that they didn't
6 certify the April election because of
7 irregularities?

8 ATTORNEY GRIFFITHS: They
9 like to say they can't certify it because
10 of the election contest 'cause that's not
11 within their discretion.

12 THE COURT: Because of the
13 November election contest?

14 ATTORNEY GRIFFITHS: That's
15 their argument. This is an election --

16 THE COURT: I just want to
17 make sure what you're saying.

18 ATTORNEY GRIFFITHS: Well,
19 I'm saying their argument is we are not
20 certifying the April 8th election because
21 there is a question about the November 8th
22 election.

23 THE COURT: Okay.

24 ATTORNEY GRIFFITHS: And
25 that's not within their discretion.

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VERONICA HANDY, ESQUIRE
CLERK OF THE COURT**Colloquy**

1 That's our position. So the issue is not
2 about the individual selected whether by
3 the courts or the legislature to fill the
4 seat in the 32nd Legislature, it's about
5 the Board of Election simply doing its
6 job.

7 The Board of Election second
8 argument is, it is well settled if there
9 are two or more persons claiming the
10 office a writ of mandamus will never issue
11 to require such officers to declare --
12 well, let me paraphrase it. You can't
13 have a writ of mandamus if two people are
14 there to fill a seat. You -- you --
15 that's what the Board of Elections are
16 saying. And they cite to *Helibron vs. Van*
17 *Brocklin 36 P. 495(1934)*.

18 As a threshold matter this
19 Washington case was actually published in
20 1894 not 1934. Second, this case is not
21 cited outside of Washington state, but
22 there is no well settled body of law
23 supporting this legal principle.
24 Regardless of who will fill the vacant
25 seat in the 32nd Legislature, the Board of

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VERONICA HANDY, ESQUIRE
CLERK OF THE COURT**Colloquy**

1 Elections still has a duty to certify the
2 winner of the April 8th, 2017 election.

3 Next, the Board of Elections
4 also asserts that mandamus is not proper
5 because there is another adequate remedy
6 at law. Now, the Board of Elections in
7 its opposition fail to identify how money
8 damages can compensate any injuries here.
9 Our argument requires us to pause and
10 think about the damages. And even under
11 the injunctive analysis the public
12 interests in election process or election
13 issue pretty well trumps the other three
14 factors or it's weighed much more heavily
15 than the other three injunctive relief --

16 THE COURT: You have
17 authority for that you can cite to the
18 Court?

19 ATTORNEY GRIFFITHS: I don't
20 have it in my oral argument.

21 THE COURT: Okay.

22 ATTORNEY GRIFFITHS: Okay.
23 In the federal forum -- and -- it --
24 because -- and I'm consolidating arguments
25 here, the public interest factor and

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CLERK OF THE COURT**Colloquy**

1 whether money damages are adequate. In
2 the federal forum Rodriguez claim that his
3 eligibility to sit in the 32nd Legislature
4 or his ineligibility implicated the
5 important issues of federalism and federal
6 supremacy.

7 On June 19th, 2012 the Third
8 Circuit recommended that the appeals from
9 the V.I. -- well, background of our V.I.
10 Supreme Court. On June 19th, 2012 the
11 Third Circuit recommended that appeals
12 from the V.I. Supreme Court go directly to
13 the U.S. Supreme Court instead of the
14 Third Circuit. So, we -- we're at a time
15 now, and it took about a hundred years to
16 get here, that the V.I. judicial branch
17 has gotten some recent autonomy in 2012.
18 And in 2012 a bill was passed shortening
19 the 15-year period for the Third Circuit
20 to review the V.I. Supreme Court's
21 opinion. And after that happen President
22 Barack Obama on December 29th of 2012
23 signed into -- a bill into law that all
24 appeals from the V.I. Supreme Court from
25 this day forward or that day forward now

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CLERK OF THE COURT**Colloquy**

1 go to the U.S. Supreme Court.

2 The next issue is, contrary to
3 the BOE's position in its opposition, the
4 federal courts, the District Court, and
5 the Third Circuit in the Sarauw matter
6 that was removed were not in agreement.
7 The only thing those two courts agreed
8 upon was the dismissal. Both courts
9 essentially -- essentially authored
10 advisory opinions about which branch of
11 the local V.I. government should decide
12 who should sit in the vacant seat of the
13 32nd Legislature. They were advisory
14 because the federal courts are precluded
15 from providing affirmative injunctive
16 relief that is binding on the Legislature.

17 The federal courts cannot tell
18 the Legislature to do something. They can
19 simply suggest it or advise. So the
20 District Court advised the local
21 government to hold a special election,
22 which cost V.I. taxpayers around a hundred
23 thousand dollars. The Court implicitly
24 recognize that Rodriquez was not eligible
25 to hold the seat because either he was or

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CLERK OF THE COURT**Colloquy**

1 he wasn't a V.I. resident. In that he
2 wasn't truthful about where he resided.
3 That's an implicit holding. The local
4 government held such an election, and the
5 Board of Elections refuses to certify the
6 winner.

7 Now the Third Circuit agreed
8 that dismissal was appropriate, but
9 essentially ignored the two V.I. Supreme
10 Court opinions.

11 THE COURT: You said the
12 Third Circuit implicitly agreed that --

13 ATTORNEY GRIFFITHS: No. The
14 Third Circuit agreed dismissal was
15 appropriate.

16 THE COURT: Oh. Okay.

17 ATTORNEY GRIFFITHS: However,
18 they disagreed with the advisory opinion
19 of the District Court in their own
20 advisory opinion of their own. And they
21 said, regardless -- well, in coming -- in
22 reaching near advisory opinion, although
23 they agreed dismissal was appropriate,
24 they ignored the two V.I. Supreme Court
25 opinions, they ignored the fact that the

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CLERK OF THE COURT**Colloquy**

1 -- the \$90,000 special election had been
2 held, and advise it's that Legislature --
3 it's the legislature who should determine
4 whether Rodriquez was eligible or should
5 consider his eligibility. So the two
6 federal courts did not agree.

7 Under principles of comity of
8 which the full faith and credit statute
9 takes root, the federal courts had an
10 obligation to respect the opinions of the
11 local courts including the V.I. Supreme
12 Court before they entered their opinions;
13 they didn't do it. But damage wise the
14 V.I. taxpayers and the public interest
15 wise, the V.I. taxpayers are out
16 approximately a hundred thousand dollars,
17 the voters have lost confident in the
18 integrity of the election process, the
19 election process has been characterized,
20 especially in the press and other media
21 fields, as a three-ring circus. This has
22 been going on for six or seven months, and
23 the autonomy of the local judicial system
24 was tossed pretty well out.

25 Now, do the local courts are

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CLERK OF THE COURT**Colloquy**

1 they bound by the Third Circuit and the
2 District Court? No. And I have -- I have
3 opinions for that. I think I brief them,
4 but if not in this in the other case. And
5 I'm happy to provide those to the Court.
6 But under full faith and credit the local
7 court should give credence to the federal
8 courts. But then the federal courts
9 should also give credence to the local
10 courts, and the federal courts did not do
11 that.

12 THE COURT: But then I
13 understand -- I mean, are you -- what are
14 you suggesting here, that somehow I should
15 overrule the Third Circuit?

16 ATTORNEY GRIFFITHS: The
17 Third Circuit is not binding on the Court.

18 THE COURT: I know, but --

19 ATTORNEY GRIFFITHS: The
20 certification of the April 8th, 2017
21 election doesn't overrule the Third
22 Circuit.

23 THE COURT: I understand
24 that, but --

25 ATTORNEY GRIFFITHS: And it's

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CLERK OF THE COURT**Colloquy**

1 time for the Board of Elections to follow
2 the law and do their job. They are not a
3 law unto themselves. And a lot of this
4 has been caused because the Board of
5 Elections hadn't follow the law. For
6 example, way back when this started when
7 they realized there was a residency
8 problem, the Board had an obligation, they
9 only had five days to act. When they
10 didn't and they knew there was an issue
11 they had an -- duty and obligation to
12 report the problem to the AG for
13 investigation and turn over their whole
14 file with respect to the residency of
15 Kevin Rodriguez. And they didn't do it.
16 And the Board had a duty to -- I mean, if
17 they wanted to say "we're not gonna follow
18 the governor's proclamation," they should
19 have done it before the special election
20 or five days after that election, because
21 after that they don't have any discretion.
22 They have five days to exercise any kind
23 of discretion, and they didn't do it.
24 Instead, this is drawn out for months --
25 weeks, months without them certifying the

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VERONICA HANDY, ESQUIRE
CLERK OF THE COURT**Colloquy**

1 special election's winner --

2 THE COURT: Okay. But if --
3 let us say they certify -- I were to enter
4 an order today telling them to certify it,
5 what -- how -- what does that -- how does
6 that change anything?

7 ATTORNEY GRIFFITHS: At some
8 --

9 THE COURT: What effect would
10 it have given the Third Circuit's decision
11 advising the Legislature that they need to
12 make a decision?

13 ATTORNEY GRIFFITHS: It
14 certainly improves the confidence and the
15 integrity of the process that the Board
16 can't exercise discretion whenever it
17 feels like it. So --

18 THE COURT: "It certainly
19 improves" --

20 ATTORNEY GRIFFITHS: The
21 confidence and the integrity of the
22 election process that the Board can't
23 simply exercise discretion whenever it
24 feels like it. The law is clear.

25 THE COURT: Okay. But how

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CLERK OF THE COURT**Colloquy**

1 does it benefit the plaintiff? If -- let
2 us assume, just for argument sake that,
3 the Court agrees with Miss Sarauw and
4 issues an order telling the Board of
5 Elections to certify Miss Sarauw as the
6 winner of the April 2017 election, how
7 does that benefit her? How does that
8 change anything when the Third Circuit has
9 opine that the Legislature has the duty
10 and the obligation to determine its
11 membership? And I read that the
12 Legislature has said that they are going
13 to have a hearing within the next ten
14 days.

15 ATTORNEY GRIFFITHS:

16 Actually, this -- the Virgin Islands' have
17 -- courts have not ruled on that issue.

18 THE COURT: That's not the
19 question. The question is -- I'm trying
20 to determine if there's an issue -- a
21 justiciable issue here for the Court to
22 decide. Even if I were to tell the Board
23 of Elections or even let us say I don't
24 tell the Board of Elections but they had
25 on their own certify the results of the

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VERONICA HANDY, ESQUIRE
CLERK OF THE COURT**Colloquy**

1 April 2017 election, how does that today
2 benefit Miss Sarauw?

3 ATTORNEY GRIFFITHS: Because
4 then there are two candidates, winning
5 candidates who are eligible or not
6 eligible to take a seat -- the vacant seat
7 in the 32nd Legislature. That's how it
8 benefits Miss Sarauw. It benefits the
9 public because the Board of Elections is
10 doing their job. And the third argument
11 -- the third issue is, the Court's
12 assuming that the Third Circuit is the --
13 is the primary law on this issue.

14 THE COURT: I'm not assuming
15 that. It's the decision that we have at
16 the moment.

17 ATTORNEY GRIFFITHS: It's an
18 advisory decision of the Third Circuit,
19 and the Legislature is holding a hearing.
20 And the hearing is whether Rodriquez is
21 eligible or not eligible. But if he's not
22 eligible then the second candidate surely
23 who's a certified winner of the April 8th,
24 2017 election is then available to take
25 her seat. So why wouldn't the Court order

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CLERK OF THE COURT**Colloquy**

1 the Board of Elections to do what the --
2 what it should have done months ago?

3 THE COURT: Well, I'm having
4 the hearing. This is what the hearing is
5 about.

6 ATTORNEY GRIFFITHS: And the
7 second part is it's rewarding
8 inappropriate behavior if the Board is not
9 ordered -- well, we also have -- we also
10 have a request for declaratory relief, so
11 certainly it's in the Court's jurisdiction
12 to enter an order stating that the Board
13 of Elections does not possess the
14 discretionary authority that it's
15 exercising. We rest.

16 THE COURT: Okay. Thank you.

17 ATTORNEY DE LEON: Your
18 Honor, I'm gonna try to be brief but there
19 are so many things said and -- so I'm
20 gonna try to address as much as I can.

21 THE COURT: Go ahead.

22 ATTORNEY DE LEON: Let's
23 start with the facts. There was a
24 complaint filed in Superior Court, this
25 court entered two memorandum opinions,

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CLERK OF THE COURT**Colloquy**

1 both were appealed. The last one that was
2 appealed, the Supreme -- there was --
3 well, there was a preliminary injunction
4 -- this court entered a preliminary
5 injunction and that was appealed and
6 subsequently came back, and the Court took
7 testimony again and a memorandum opinion
8 was issued by this court dismissing the
9 plaintiff's complaint. Went to the
10 Supreme Court the Supreme Court re- -- and
11 -- the Supreme Court -- the Supreme Court
12 held that the -- Rodriguez could not --
13 was estopped from making the arguments
14 that he made in court.

15 The Supreme Court found that the
16 Vento standard that this court used was
17 the inappropriate standard to determine
18 residency; however, the Court found that
19 it was harmless error. The issue was
20 remand to this Court for further
21 proceeding and then on a footnote the
22 Supreme Court noted that this court needed
23 to decide jurisdiction before it goes any
24 further since the Legislature had
25 reconvened.

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CLERK OF THE COURT**Colloquy**

1 The matter was moved to the
2 District Court. There were two -- one or
3 two full blown hearings at the District
4 Court. The District Court dismissed the
5 complaint. This is twice the complaint
6 has been dismissed. Dismissed the
7 complaint for mootness because the
8 election had already been certified. The
9 -- Kevin Rodriguez filed an appeal. The
10 Third Circuit affirmed the District Court
11 dismissal of the complaint and, basically,
12 asked that the Legislature -- the
13 Legislature tend to its duties and hold a
14 hearing. One of the reasons why the
15 Legislature is holding a hearing because
16 Kevin Rodriguez holds a prima facia title
17 to that position.

18 In *Bishop v. Woods*, the United
19 States Supreme Court said, if an elected
20 official -- if a -- if a person has been
21 elected to a state office he has a -- this
22 person has a property interest in that
23 office and therefore the only way you can
24 take that is to give them due process of
25 law under the 14th Amendment, and this is

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CLERK OF THE COURT**Colloquy**

1 what we're having on June 27th. Having
2 said that, the complaint has been laid to
3 rest. What the plaintiff has done is to
4 take the same allegation, wrap it in the
5 petition -- a petition for a writ and
6 present it to the Court as if it's
7 something completely different, some issue
8 that has not been decided. That is not
9 the case.

10 What we have here is the
11 plaintiff -- well, when they filed their
12 petition they were trying to circumvent
13 the Third Circuit. They were trying to
14 get before the Court before the Third
15 Circuit issued its opinion. Now that they
16 are before the Court and the Third Circuit
17 has ruled, they are trying to discredit
18 the Third Circuit opinion. They are using
19 the principle of comity. Well, if there
20 is comity between -- if the comity works
21 for them in the sense that the District
22 Court -- and the District Court did not
23 invite the executive branch to call an
24 election, the District Court basically
25 listed the remedies that were available.

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CLERK OF THE COURT**Colloquy**

1 If the issue of comity works
2 there for the executive branch, then it
3 should work for this court. After all,
4 the District Court dismiss the case, the
5 Third Circuit affirm the dismissal. Why
6 are we litigating this? And so now that
7 the facts are straight, the one issue --
8 I'll take it issue by issue. They are
9 endearing to the public interest. There
10 are money damages -- monetary damages. I
11 don't know that you have any monetary
12 damages to an office that you have not
13 held. And they didn't cite any case law
14 to that, but they needed to cite case law
15 as to whether they are entitle to monetary
16 damages to an office that they have not
17 held and that they have litigated for six
18 or seven months.

19 In terms of the public interest,
20 well, the public is interested in, one,
21 having a free and fair election; two,
22 having the issue be resolved as quickly as
23 possible. In this case ordering the Board
24 of Election to certify by certification --
25 because if they -- let me backup. They

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VERONICA HANDY, ESQUIRE
CLERK OF THE COURT**Colloquy**

1 are using the word certification as if
2 it's just some minister- -- well, they've
3 actually argued it's a ministerial duty.
4 But it cannot be a ministerial duty if
5 they are here. Because if it is, the
6 election itself -- the election -- the
7 results of the election speaks for itself
8 and if they don't -- if that's the case
9 they could go to the senate and say "We
10 won the election and we should be seated."
11 One of the reasons why they are here is
12 because they know certification actually
13 imprints a legal entitlement to the seat.
14 So they are here asking for legal
15 entitlement to a seat that is currently
16 being held by someone else, and they are
17 asking this Court to do the
18 un-precedential thing, to order the Board
19 to do something that the Legislature never
20 countenance. The Legislature of the
21 Virgin Islands never countenance the fact
22 that the Board of Election would issue two
23 certifications, a certification to A, a
24 certification to B, for the same seat.
25 And this is what they are asking the Court

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CLERK OF THE COURT**Colloquy**

1 to do. And the way they are asking the
2 Court to do this is to ask the Court to
3 read the statute literally. That's what
4 they are doing. They are saying it says
5 the Board should do A, B, C, D and that's
6 it. That's what they are doing.

7 In statutory interpretation we
8 know statutes are to be read the way they
9 are, but courts are to be mindful that
10 when interpreting a statute the result is
11 not absurd or illogical. In this case to
12 read the statute literally would produce
13 an absurd result, because we will be
14 actually -- the Court will be actually
15 ordering the Board of Election to issue
16 certificate of election to a second person
17 for one seat. One seat.

18 Their argument is that the --
19 one of the arguments made is that the
20 District Court ordered the governor to
21 hold the election. The District Court
22 didn't do that. The District Court could
23 not have done that because the seat was
24 not vacant. When the District Court
25 dismissed the case, Kevin Rodriguez was

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VERONICA HANDY, ESQUIRE
CLERK OF THE COURT**Colloquy**

1 still senator elect. There was nothing
2 precluding him from taking the oath. They
3 are here trying to -- trying to weave --
4 bob and weave, bob and weave, between the
5 two courts. The issue was decided in the
6 federal court because the issue was a
7 federal statute. The issue before the
8 Court was a federal statute. It was
9 decided in federal court.

10 The District Court never invited
11 the governor to call an election because
12 the District Court dismissed the
13 complaint. Once the complaint was
14 dismissed the injunctions that were --
15 that came forth from that complaint were
16 discharged legally. So they will -- to
17 begin with there was never a vacancy in
18 the legislature. So now they are there,
19 granted there was an election held, and I
20 think it compounded the issue, because now
21 you have two elections, a special election
22 being held, but we have not decided the
23 general election. So now you have -- now
24 you have two elections with two separate
25 results. So they -- so now they are

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CLERK OF THE COURT**Colloquy**

1 coming before the Court asking the Court
2 in their motion to order the Board of
3 Election to decertify Kevin Rodriquez so
4 they can be certified. That's what they
5 -- that's one of the things they argued
6 for.

7 The Legislature -- if they are
8 asking for the Board to be constrained or
9 restrained base on whatever power the
10 Legislature give to the Board, then we
11 should be consistent. The Legislature
12 never gave the Board of Election the power
13 to decertify an election. Now this Court
14 can decertify the election, but I think to
15 order the Legislature to decertify Kevin
16 Rodriquez would be ordering the Board to
17 take action -- to take action which they
18 have no authority to do.

19 THE COURT: But -- well, let
20 me ask you this, if the Legislature were
21 to decide to not seat Mr. Rodriquez, would
22 the Board of Elections certify the April
23 election?

24 ATTORNEY DE LEON: Well,
25 there is no -- because then there is only

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VERONICA HANDY, ESQUIRE
CLERK OF THE COURT**Colloquy**

1 -- there is a vacancy.

2 THE COURT: So is that a yes?

3 ATTORNEY DE LEON: But
4 there's a vacancy.

5 THE COURT: No, I didn't
6 understand your answer. If the
7 Legislature were to decide that they are
8 not going to seat Mr. Rodriquez, would the
9 Board of Elections then certify the
10 results of the April election?

11 ATTORNEY DE LEON: The
12 Board's -- Your Honor, the Board's
13 position has not been they are not
14 certifying the result. The Board's
15 position is that the Legislature or some
16 other entity need to disqualify Kevin
17 Rodriquez --

18 THE COURT: And I'm asking
19 you, if the Legislature disqualifies Mr.
20 Rodriquez will the Board of Elections then
21 certify the April election, the results of
22 the April election?

23 ATTORNEY DE LEON: But there
24 would be no -- there would be a vacant
25 seat. There would be no --

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VERONICA HANDY, ESQUIRE
CLERK OF THE COURT**Colloquy**

1 THE COURT: Is that a yes?
2 Or you don't want to say?

3 ATTORNEY DE LEON: But, Your
4 Honor, I'm answering the question.

5 THE COURT: No, because it's
6 a yes or no answer I'm looking for.

7 ATTORNEY DE LEON: But -- I
8 --

9 THE COURT: If you don't want
10 to say then tell me that, but I'm not
11 hearing a yes or a no. I'm hearing
12 something, like, one can read between the
13 lines on.

14 ATTORNEY DE LEON: But, Your
15 Honor, the argument is, the Board -- the
16 Board was not given the authority by the
17 Legislature to certify two people for the
18 same seat. If Kevin Rodriguez is
19 disqualified by the Legislature, which is
20 of the body that can do it, then there is
21 no reason for the Board not to act.

22 THE COURT: So then it would
23 certify, is that what you're saying?

24 ATTORNEY DE LEON: But --

25 THE COURT: Would they

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VERONICA HANDY, ESQUIRE
CLERK OF THE COURT**Colloquy**

1 certify Miss Sarauw as the winner of the
2 April 2017 election?

3 ATTORNEY DE LEON: But the --
4 the -- the election speaks for itself,
5 Your Honor, there is no reason not to
6 act --

7 THE COURT: So then you don't
8 ever need to certify any results then if
9 every election speaks for itself.

10 ATTORNEY DE LEON: No. But
11 in this case, Your Honor, you're ask- --
12 the question is whether the Board would
13 certify the winner of the election? But
14 she one the election, so the issue before
15 the Court is whether -- the issue is
16 whether the Board can issue certification
17 to two persons for the same seat.

18 THE COURT: But I'm asking --

19 ATTORNEY DE LEON: If one is
20 disqualified then there is no reason not
21 to issue certification to the other
22 person. There was an election held.

23 THE COURT: I'm still not
24 sure if you're saying "yes, the Board will
25 certify her if the Legislature

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VERONICA HANDY, ESQUIRE
CLERK OF THE COURT**Colloquy**

1 disqualifies Mr. Rodriguez." You also
2 said "the election speaks for itself." So
3 then maybe you don't ever -- the Board
4 doesn't -- are you suggesting the Board
5 never needs to certify results?

6 ATTORNEY DE LEON: Well --
7 yes. I'm not suggesting --

8 THE COURT: Because they all
9 speak for themselves?

10 ATTORNEY DE LEON: No, Your
11 Honor --

12 THE COURT: Only the April
13 one speaks for itself?

14 ATTORNEY DE LEON: No. No.
15 No, that's not what I'm suggesting. Let
16 me make myself clear. What I'm saying is,
17 as to the winner we know who the winner is
18 for the election, for the April 8th
19 election, that's why I said the election
20 results speaks for itself. As to the
21 winner of that election. The issue now is
22 whether the Board can issue certification
23 to two persons for the same seat, and I'm
24 saying, if one -- if Kevin Rodriguez is
25 disqualified, then there is no reason for

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VERONICA HANDY, ESQUIRE
CLERK OF THE COURT**Colloquy**

1 the Board not to act.

2 ATTORNEY GRIFFITHS: May I
3 reply, Your Honor?

4 THE COURT: I'm going to get
5 to you, Attorney Griffiths, but I don't
6 know if Attorney de Leon is finished
7 because I interrupted her with my
8 question.

9 You may proceed, counsel.

10 ATTORNEY DE LEON: So the --
11 so now they're -- so the argument here is
12 that the Board -- the certification of the
13 election is a ministerial duty and the
14 Board can order it, and then for the
15 public interest then we should just have
16 two people with certification for one
17 seat. I -- I'm not sure that this serves
18 the public interest. I believe there is a
19 process. There is a process and plaintiff
20 has been trying to jump over the process
21 from the beginning. There is a process.
22 The process is being unfold as we speak.
23 Plaintiff should allow the process to go
24 forward.

25 There is no reason for this

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VERONICA HANDY, ESQUIRE
CLERK OF THE COURT**Colloquy**

1 court to chime in at this point because
2 the complaint was dismissed, the
3 Legislature has said it will act, and then
4 so whatever decision the Legislature makes
5 affect -- would affect whatever takes
6 place in here. There is no decision that
7 the Legislature will make that will not
8 affect Rodriquez who is not here and is an
9 indispensable party and the -- and
10 plaintiff. So their -- I ask that the
11 petition be denied, the complaint be
12 dismissed, all their motions that they
13 file be dismissed, because the comity, if
14 we use the principle of comity, one court
15 has spoken. And there is no reason to
16 circumvent the process to compound the
17 issue from the public's perspective.

18 The Board of Election was never
19 given the power to certify two persons for
20 one seat. Why should we -- why should --
21 why should this happen now? Especially
22 when the Legislature is gonna act, and
23 whatever action that the Legislature takes
24 is going to affect whatever it is that
25 we're doing here today. And the second --

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VERONICA HANDY, ESQUIRE
CLERK OF THE COURT**Colloquy**

1 and the last point I'm gonna make is that,
2 this is just plaintiff trying to
3 relitigate the same issue. If it wasn't,
4 then they would have waited. They
5 appeared before the Third Circuit. They
6 argued their position before the Third
7 Circuit. So they knew the litigation had
8 not ended. They knew -- and the Third
9 Circuit said "I will try to expedite that
10 opinion." They knew that. They turn
11 around and filed a petition. They knew
12 that the litigation had not ended. So, to
13 the extent that they are asking for a
14 writ, they have not met the requirements
15 for a writ.

16 Under the circumstances they
17 should -- the writ should be denied
18 because of the principle of comity. They
19 can't show that they have clear -- they
20 can't show that they have -- they don't
21 have a way of vindicating their rights.
22 They said the Board acted. A board action
23 you can do that through a writ of review.
24 They could have done that. They also --

25 THE COURT: When would they

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VERONICA HANDY, ESQUIRE
CLERK OF THE COURT**Colloquy**

1 have filed a writ of review? When would
2 have been the 30 days -- from what date
3 would you have counted if the Board didn't
4 certify the election?

5 ATTORNEY DE LEON: I think
6 that would be the 24th.

7 THE COURT: What day would
8 you count from? How do you -- when do you
9 start to count the 30 days if the Board
10 never certified the results of the special
11 election?

12 ATTORNEY DE LEON: The day
13 that they voted. The day that they voted.
14 The Board took a vote. The Board voted.
15 This was done by a vote. And in this
16 jurisdiction agencies' actions are
17 reviewed by a writ of review. They --

18 THE COURT: What did they
19 announce --- I'm sorry for cutting you
20 off. What did the Board announce for the
21 reason for not certifying the April
22 election -- the results of the April
23 election?

24 ATTORNEY DE LEON: Because
25 they couldn't issue a writ when Kevin --

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VERONICA HANDY, ESQUIRE
CLERK OF THE COURT**Colloquy**

1 they couldn't issue, I'm sorry, a
2 certification of election when Kevin
3 Rodriquez had not been disqualified, and
4 he still had a certification of election,
5 and he still held it, and that the matter
6 was still being litigated because it was
7 up on appeal. They could have filed for a
8 writ. As a matter of fact, they could
9 have filed for an emergency writ of
10 review. They didn't do that.

11 Now, this is all part of the
12 mandamus whether they are entitle to a
13 mandamus. They didn't do that. Whether
14 they have clear title would -- yeah, a
15 special election was held. The issue is
16 whether we needed a special election to be
17 held? So, under -- from our perspective
18 they are not entitle to a writ. In terms
19 of their injunctive relief, the public
20 interest is never served by forcing or
21 ordering the Board of Election to pick
22 sides in a dispute. That's not their
23 role. The Legislature is gonna act, let
24 the Legislature act.

25 ATTORNEY GRIFFITHS: Briefly,

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VERONICA HANDY, ESQUIRE
CLERK OF THE COURT**Colloquy**

1 Your Honor?

2 THE COURT: Yes, go ahead.

3 ATTORNEY GRIFFITHS: Okay.

4 First of all, the writ of review, this
5 came up in the opposition by the Board of
6 Elections who took the position that
7 Sarauw had another -- she wasn't entitle
8 to mandamus because she had an adequate
9 remedy of law which is the writ of review.
10 Excuse me. It's hard to talk and breathe
11 at the same time. A writ of review is the
12 statutory request for equitable injunctive
13 relief, and adequate remedy of law for
14 money damages. We're not here asking for
15 any money damages, we're here asking for
16 injunctive relief.

17 A writ of review -- and there's
18 a history of cases where mandatory relief
19 is given in the Virgin Islands in election
20 cases. So there's not one case saying
21 mandamus relief is inappropriate in an
22 election case and it should go to a writ
23 of review. But, even having said that, a
24 writ of review is whether an agency or a
25 commission or a board exercised its

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VERONICA HANDY, ESQUIRE
CLERK OF THE COURT**Colloquy**

1 discretion and was arbitrary and
2 capricious. The Board of Elections had no
3 discretion to exercise. And so even
4 though we talk about Mr. Rodriguez today
5 and whether he is eligible and whether his
6 perjury in the Tennessee documents
7 preclude him from being eligible, really
8 today all we are asking for is the Court
9 to order the Board of Elections to do its
10 job as the statute says.

11 The Board has refused to do it
12 based on, "Well, we can't do this because
13 there'll be two people certified." That's
14 not the Board's -- that's not the Board's
15 decision to make. And even though you
16 have two people certified there's either
17 the courts or the legislature is gonna
18 decide the two people who -- the one of
19 the two people who take that vacant seat.

20 The next thing is, we're not
21 trying to subvert anything. Since all of
22 these opinions, and we're -- Sarauw was
23 haled into the Third Circuit, she didn't
24 volunteer to go there. But --

25 THE COURT: Did she resist

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VERONICA HANDY, ESQUIRE
CLERK OF THE COURT**Colloquy**

1 the transfer to the District Court? Did
2 she --

3 ATTORNEY GRIFFITHS: Yes.

4 THE COURT: -- ask the
5 District Court to send it back to the
6 Superior Court?

7 ATTORNEY GRIFFITHS: Yes, she
8 did. And standing here today we don't
9 recognize the Third Circuit opinion as the
10 supreme law of the land of the Virgin
11 Islands. We recognize, as we can, the
12 Virgin Islands Supreme Court is the
13 supreme law. Having said that --

14 THE COURT: Even on federal
15 issues?

16 ATTORNEY GRIFFITHS: When
17 it's affirmative injunctive relief, I
18 mean, they both -- both courts have the
19 power to interpret a federal statute such
20 as the Organic Act, and the V.I. Supreme
21 Court does it all the time, especially in
22 election process. But where it becomes
23 advisory, we don't recognize that as the
24 supreme law of the land. The Third
25 Circuit's opinion that it's the

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VERONICA HANDY, ESQUIRE
CLERK OF THE COURT**Colloquy**

1 Legislature that should determine whether
2 Rodriquez's perjury should preclude him
3 from taking the seat, that is advisory.
4 However, Plaintiff Sarauw will say on the
5 second issue where we argue by operation
6 of law he should be decertified, we're not
7 asking the Board of Elections to decertify
8 Rodriquez, our argument was by operation
9 of law. We're willing to agree to a stay
10 on that issue until the Legislature goes
11 through its process. But on the first
12 issue --

13 THE COURT: You're willing to
14 agree to a stay on what?

15 ATTORNEY GRIFFITHS: On the
16 second issue whether Rodriquez should be
17 decertified as an operation of law. We're
18 willing to agree to a stay on that and let
19 the Legislature go through their process.
20 However, what we're not willing to do is
21 to stand here today and say the Board of
22 Election should be able to exercise
23 discretion at its will. They have a job
24 to follow the statute and certify the
25 election, and it's not the selection of

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VERONICA HANDY, ESQUIRE
CLERK OF THE COURT**Colloquy**

1 the person who have sat in that vacant
2 seat, but there was an election held, they
3 have a job to certify it, and they should
4 do their job.

5 For them to argue that there is
6 some reason they shouldn't, they lost the
7 opportunity to do that. Their opportunity
8 to do that was within five days of that
9 election. They didn't do it. They had an
10 opportunity to do it before that hundred
11 thousand dollar election was held, and
12 they didn't do it. So now they just need
13 to do their job.

14 THE COURT: But what about
15 these cases they cited in their opposition
16 where they seem to -- well, not seem to,
17 but where they argue that it would be
18 improper to --

19 ATTORNEY GRIFFITHS: Have two
20 people?

21 THE COURT: Yes.

22 ATTORNEY GRIFFITHS: There's
23 only one case, and I talked about that.
24 It's a 19- -- 1894 case out of the state
25 of Washington.

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VERONICA HANDY, ESQUIRE
CLERK OF THE COURT**Colloquy**

1 THE COURT: Right. So do you
2 have any authority to the contrary?

3 ATTORNEY GRIFFITHS: That two
4 people cannot be certified? I cited in my
5 motion --

6 THE COURT: That two people
7 can be certified.

8 ATTORNEY GRIFFITHS: I cited
9 in my motion where, generally -- was two
10 people were certified and the successor
11 took the seat. None of the cases are
12 directly on point.

13 Usually -- in some cases instead
14 of holding a special election the second
15 person who got the votes takes the seat.
16 Here we had a special election, so in this
17 case it's a lot more stronger for the
18 Board of Elections to certify the special
19 election than, you know, the body of case
20 law really goes around should they certify
21 the second person who got the second most
22 votes. And that's where it becomes dicy,
23 when they decide to disenfranchise the
24 voters who voted for the person --

25 THE COURT: Isn't that why

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VERONICA HANDY, ESQUIRE
CLERK OF THE COURT**Colloquy**

1 the law provides for a special election,
2 so that the persons who in this instance
3 would have voted for Mr. Rodriquez would
4 not be disenfranchised?

5 ATTORNEY GRIFFITHS: Exactly.
6 That's why they should just certify the
7 special election and let the rest of the
8 process take its course. We don't need a
9 writ of review. It's not appropriate.
10 There are no money damages at issue here.
11 Or we have a broad ending, we're willing
12 to get it -- we're willing for the Court
13 to stay the second issue whether operation
14 of law or whether he should be
15 decertified. Let the Legislature rule on
16 that. We're fine with that. But they
17 need to do their job and certify according
18 to the statute.

19 ATTORNEY DE LEON: If I may,
20 Your Honor?

21 THE COURT: One more minute
22 -- one minute, Attorney de Leon, I have
23 one more question for plaintiff.

24 Do you have any response to the
25 defendant's argument that Mr. Rodriquez is

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VERONICA HANDY, ESQUIRE
CLERK OF THE COURT**Colloquy**

1 an indispensable party to this case?

2 ATTORNEY GRIFFITHS: Well, if
3 they keep it narrow on the special
4 election, he would have -- he didn't run
5 for the special election, he is not
6 contemplating that he should -- you can
7 even be certified as the winner of the
8 special election, so we keep it narrow.
9 Rodriquez is not an indispensable party.
10 And I will advise the Court that I served
11 a courtesy copy of the complaint and all
12 the motion practice on Rodriquez's
13 attorney Frank Jackson who probably
14 provided it to the Third Circuit which may
15 have persuaded them to enter their opinion
16 a little bit faster. So had Rodriquez
17 wanted to intervene he certainly could
18 have and would have if he wanted to.

19 THE COURT: Thank you.

20 ATTORNEY DE LEON: Your
21 Honor, that's not what the rule requires.
22 The rule requires that -- that you
23 actually bring in the indispensable party.
24 They haven't done that. As to the writ of
25 review, the Virgin Islands writ of review

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VERONICA HANDY, ESQUIRE
CLERK OF THE COURT**Colloquy**

1 statute allow for the Court to mandate an
2 agency. So it's incorrect that they
3 couldn't get any remedy under that
4 statute. The statute is a very liberal
5 statute. It allows for the Court to
6 compel, to mandate --

7 THE COURT: Okay. But if
8 they -- if they -- for argument sake, if
9 indeed they had the right to file a writ
10 of review and they did not do that, isn't
11 it now too late for them to file a writ of
12 review?

13 ATTORNEY DE LEON: Well,
14 that's our argument --

15 THE COURT: That's your
16 argument, they should have and they didn't
17 and so they have no claim?

18 ATTORNEY DE LEON: Well, Your
19 Honor --

20 THE COURT: You think they
21 are barred?

22 ATTORNEY DE LEON: Well, no,
23 that's one of our arguments. One of our
24 arguments is that -- well, it's a two-fold
25 argument, because remember, a writ of

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VERONICA HANDY, ESQUIRE
CLERK OF THE COURT**Colloquy**

1 mandamus it's an extraordinary request.
2 You have to have zero way of vindicating
3 your rights. It doesn't -- you can't come
4 to the Court and say, "Well, we do have
5 this avenue but it will take a long time."
6 They didn't even try. They could have
7 filed an emergency petition for a writ of
8 review.

9 It is the Board -- it is a Board
10 action that they are challenging. This
11 action was taken by the Board -- the Board
12 voted. They are challenging the Board's
13 action. They don't file a petition for a
14 writ of review, they come straight to the
15 Court, they could -- and that's a remedy
16 available to them. They come straight to
17 the Court asking for a writ of mandamus,
18 but they don't file a petition for an
19 emergency writ -- a writ of review, and
20 then if nothing happens say "Well, we did
21 file and we -- it's not going anywhere so
22 we're here." But they didn't even attempt
23 to do that.

24 And you don't get a writ of
25 mandamus just because you don't want to

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VERONICA HANDY, ESQUIRE
CLERK OF THE COURT**Colloquy**

1 wait for the result. That's not why you
2 file a petition for a writ of mandamus.
3 You have to be entitled to it. And in
4 this -- they are trying to establish their
5 entitlement in this same process. This is
6 what they are doing. They filed three
7 separate things with the Court asking for
8 three separate relief. If you are asking
9 for a writ of mandamus you don't have any
10 relief available. So how -- this is your
11 only way -- this is your only way. So why
12 is it we're here arguing for injunctive
13 relief and -- and a writ of review whether
14 there is -- whether they could have gone
15 under the statute, the mere fact that we
16 are arguing this means that they are not
17 entitle to it.

18 The second issue that they
19 raised and they have not produced not one
20 ounce of authority, is that what -- the
21 certification is ministerial. The statute
22 says canvassing to certify and a lot more.

23 THE COURT: So are you saying
24 certification is not ministerial?

25 ATTORNEY DE LEON:

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VERONICA HANDY, ESQUIRE
CLERK OF THE COURT**Colloquy**

1 Certification under our statute cannot be
2 ministerial.

3 THE COURT: So why you told
4 me earlier that the April 2017 election
5 results speaks for itself?

6 ATTORNEY DE LEON: What I
7 said it speaks for itself as to the winner
8 of the election. I was responding to a
9 comment, Your Honor, that you made and I
10 said it speaks for itself as to the winner
11 not anything else. As to the winner of
12 the election.

13 THE COURT: I see.

14 ATTORNEY DE LEON: And my
15 argument is, if they think it is -- the
16 Board not what it is, then they won. Then
17 they could of gone to the Legislature.
18 That's the line -- the argument that I was
19 making. But as -- it's narrow as to your
20 -- as to -- I was responding to your
21 comment.

22 THE COURT: But how -- what's
23 the routine of the, and I don't know if
24 you represented the Board long enough to
25 know the answer, but in other elections in

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VERONICA HANDY, ESQUIRE
CLERK OF THE COURT**Colloquy**

1 years past, I mean, how routine is the
2 certification, is it done as a matter of
3 course or is there debate and a vote?

4 ATTORNEY DE LEON: Well, we
5 have never had this before, so everything
6 is new. This whole -- the entire thing,
7 the special election, one candidate elect
8 having -- holding a certificate of
9 election and a special election being
10 held, this is unprecedented. We've never
11 had this before. This has never happened.

12 THE COURT: So -- but in a
13 general election or a primary election, is
14 there debate and a vote taken about
15 whether results should be certified?

16 ATTORNEY DE LEON: I assume
17 the Board convenes a regular board
18 meeting, and they discuss the business of
19 the Board, and then they take a vote and
20 the election is certified.

21 THE COURT: Do you know that
22 or you're just assuming that they debate
23 or take a vote on whether results should
24 be certified in a general election or a
25 primary election?

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VERONICA HANDY, ESQUIRE
CLERK OF THE COURT**Colloquy**

1 ATTORNEY DE LEON: I do not
2 know the fact that -- I know that the
3 Board convene --

4 THE COURT: For a meeting.

5 ATTORNEY DE LEON: -- for a
6 meeting that they convene, and it's a
7 Board action, it's on the agenda. It's a
8 Board action. Whether they normally vote
9 or not vote, I would assume that they
10 would have to vote. But -- because -- but
11 going back to whether it's ministerial or
12 not, in most jurisdiction there is the
13 board of canvassing, and there is either
14 the board of election or a secretary of
15 state. The canvassing entity actually is
16 the one that actually counts the votes and
17 take -- tallies it up and send it to
18 another entity, and they are the one that
19 issue the certificate. So certification
20 is not a mere, this is the result. What
21 goes with certification is the letter that
22 says "You have been elected to seat number
23 two in District A." That's what goes with
24 certification.

25 THE COURT: And the Board of

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VERONICA HANDY, ESQUIRE
CLERK OF THE COURT**Colloquy**

1 Election routinely issues those notices to
2 winning candidates?

3 ATTORNEY DE LEON: That is
4 correct. But this is after certification
5 then --

6 THE COURT: I understand.

7 ATTORNEY DE LEON: -- they
8 issue that. But -- so our Board -- our
9 Board elect -- of Election serves -- does
10 ministerial duties and also discretionary
11 and judicial duties. So to come before
12 court and say the Board -- it's a
13 ministerial duty, you have to look at
14 exactly what they are doing, and they have
15 not provided any authority to state to
16 show that the Board -- and I know they
17 filed -- they cited to two Colorado cases,
18 but in those two cases they had a
19 canvassing board. Right? They had two
20 separate entities. In our case we have
21 one board, and the Board has ministerial
22 duties, quasi-judicial, and discretionary
23 duties.

24 THE COURT: And did those two
25 Colorado cases include any special

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VERONICA HANDY, ESQUIRE
CLERK OF THE COURT**Colloquy**

1 election?

2 ATTORNEY DE LEON: I don't
3 think so, Your Honor. They cited -- they
4 cited it as to compel the Board to put
5 somebody's name on the ballot, that was
6 the issue.

7 THE COURT: Oh. I see.

8 ATTORNEY GRIFFITHS: Just one
9 comment, Your Honor?

10 THE COURT: Yes.

11 ATTORNEY GRIFFITHS:
12 Actually, we cited to a whole lot more
13 than two Colorado cases. And the
14 overwhelming authority and general rule of
15 law is mandamus has long been found by
16 courts to be appropriate avenue to compel
17 for accordance of statutory required
18 ministerial duties of counting ballots and
19 certifying the election results. And
20 there are case law -- I just gave, you
21 know, a number of cases, but there's a
22 Guam opinion --

23 THE COURT: I saw that.

24 ATTORNEY GRIFFITHS: -- which
25 collected cases. There's Guam, Colorado,

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VERONICA HANDY, ESQUIRE
CLERK OF THE COURT**Colloquy**

1 Ohio, Texas, Alabama.

2 THE COURT: Do any of those
3 opinions include a situation where there
4 was a special election?

5 ATTORNEY GRIFFITHS: I can't
6 recall now. It's been so long ago. But
7 the special election is even more
8 compelling why they should exercise their
9 statutory duty to simply certify the
10 results. We shouldn't have this document.
11 They have no judicial discretion. And
12 Attorney de Leon keeps talking about their
13 dual discretion. Their judicial
14 discretion ended five days after the
15 election. So their job is just to certify
16 the results. It's the courts' job or the
17 Legislature's job to make discretionary
18 decisions.

19 THE COURT: So you believe
20 that it would -- it's okay for the Board
21 to certify two different people for the
22 same seat? Because right now you seem to
23 have conceded that you would stay the
24 issue of whether or not Mr. Rodriguez
25 should be decertified and let the

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VERONICA HANDY, ESQUIRE
CLERK OF THE COURT**Colloquy**

1 Legislature decide that, so you --

2 ATTORNEY GRIFFITHS: I
3 haven't conceded it, but --

4 THE COURT: Well, no.

5 ATTORNEY GRIFFITHS: -- we
6 agree to stay the issue.

7 THE COURT: Right. And so
8 that means --

9 ATTORNEY GRIFFITHS: And let
10 the Legislature --

11 THE COURT: Okay. What I was
12 trying to say is that by the plaintiff --
13 it seems that by the plaintiff agreeing to
14 stay the issue of whether Mr. Rodriquez
15 should be decertified means that the
16 plaintiff agrees he is still certified.
17 And so then the next question is, do you
18 -- are you suggesting to the Court that it
19 is okay and proper for the Board of
20 Elections to certify two different persons
21 for the same seat?

22 ATTORNEY GRIFFITHS: Well,
23 we're talking about the same seat, but
24 that's not what the law says. The law
25 says "certify an election." So they have

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VERONICA HANDY, ESQUIRE
CLERK OF THE COURT**Colloquy**

1 the job to certify -- they had the job to
2 certify Kevin Rodriguez in the November
3 8th election even though, even though they
4 knew there were issues about his
5 residency, their duty was to certify him
6 and then turn the records over to somebody
7 else to investigate. And it would have
8 been at some point the courts, 'cause
9 obviously there is a gap there. So
10 between November 8th and January 8th, it's
11 up to the Court. If it's brought to the
12 Court's attention and the Court, you know,
13 addresses it before of January 8th, it's
14 in the Court's purview. After January
15 8th, according to the Third Circuit, it
16 moves to the Legislature. And certainly
17 the V.I. Supreme Court somewhat implied
18 that it may be the Legislature who takes
19 over, although I have arguments against
20 that. I mean, it's two months of
21 litigious exhausting journey to all of a
22 sudden say, whoops, it's January 8th,
23 let's turn it all over to the Legislature
24 and start from scratch.

25 However, what we're doing here

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VERONICA HANDY, ESQUIRE
CLERK OF THE COURT**Colloquy**

1 today is, we want the Board of Elections
2 to do their job when they are suppose to
3 do it and this is just one example they
4 need to do their job according to the law.
5 If they want the statute to be changed
6 they can certainly lobby the Legislature
7 to do it. But, today, the Board should be
8 certifying this election results. Not
9 saying, "Well, we have two people in the
10 same seat, what a problem. We're not
11 gonna do it." That's not up to them to
12 decide that. And they are certifying
13 election results not the person who is
14 gonna sit in that chair in the 32nd
15 Legislature. But, you know, the principle
16 here is today, they need to do their job
17 when they suppose to do it. If the time
18 passes, and the Third Circuit somewhat
19 made that clear, because as of January 8th
20 now we're at the Legislature. They need
21 to do their job when they are suppose to
22 do it, and that's what we're willing to
23 pursue.

24 And this lawsuit is not over.
25 We had a declaratory relief, so we want a

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VERONICA HANDY, ESQUIRE
CLERK OF THE COURT**Colloquy**

1 court to tell the Board of Elections do
2 your job when you're suppose to. And this
3 is one instance the Court can begin to say
4 "You've got boundaries, Board of
5 Elections." And this is a perfect
6 opportunity to reinforce those boundaries.
7 So that's Sarauw's position and we thank
8 the Court for your time.

9 ATTORNEY DE LEON: Briefly,
10 Your Honor. Let me just be brief.

11 THE COURT: Please be brief,
12 counsel.

13 ATTORNEY DE LEON: Very
14 brief. What I heard is they have relief
15 -- they have a path to vindicate their
16 rights which is the declaratory relief.

17 THE COURT: But that's part
18 of their initial filing in this case, an
19 action for declaratory relief. Action for
20 declaratory relief and mandamus relief.

21 ATTORNEY DE LEON: I
22 understand that, Your Honor, but going --
23 I'm going back to the requirements of a
24 writ, and -- so, basically, what -- they
25 conceded that the Board -- it seems to me

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VERONICA HANDY, ESQUIRE
CLERK OF THE COURT**Colloquy**

1 the only argument we have now is at what
2 time -- when did the Board lose its
3 judicial or quasi-judicial discretionary
4 authority, because they conceded that the
5 Board has that authority but then it ended
6 five days. That's what they just said.
7 That's -- so they are conceding to that.

8 Our -- I'll just -- I'll be
9 brief.

10 THE COURT: So --

11 ATTORNEY DE LEON: The remedy
12 shall --

13 THE COURT: Go ahead.

14 ATTORNEY DE LEON: The
15 plaintiff cannot come before this court
16 and argue that the process is taking too
17 long I need to be seated now, and please
18 issue an injunction -- issue what -- an
19 order to force the Board to do -- so I can
20 be seated. That's what they argued.
21 Basically, the arguments the plaintiff's
22 attorney made was that the Supreme Court
23 said that it's the Legislature and they
24 figured it's gonna be too long.

25 The whole thing is about how

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VERONICA HANDY, ESQUIRE
CLERK OF THE COURT**Colloquy**

1 long the process is taking. This isn't
2 about the plaintiff not having an adequate
3 avenue to vindicate her rights. This is
4 all about how long the process is taking.
5 That is not the requirement for mandamus
6 relief. And -- that is not the
7 requirement. The requirement is you must
8 not have any other adequate remedy at law.

9 They are coming here they are
10 arguing about how long the process takes,
11 that cannot be an argument. And in terms
12 of whether mandamus can be used in this
13 case, we cited to several, several cases
14 that state mandamus cannot be used to
15 usurp an elected person from a position.
16 Because to do that you would have to
17 establish your right to mandamus in the
18 same proceeding. And the general rule --
19 the general rule is when you file for a
20 writ of mandamus you must be entitle. At
21 the time that you file you must be entitle
22 to that relief. You cannot establish the
23 relief in the same proceeding which is
24 what they are doing now. They are being
25 generous by saying "We're not even gonna

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VERONICA HANDY, ESQUIRE
CLERK OF THE COURT**Colloquy**

1 ask the Court to decertify him." Well,
2 that's very generous of you. Because --
3 because then you are saying there is
4 somebody in that seat.

5 ATTORNEY GRIFFITHS: We are
6 the movant, Your Honor, we're suppose to
7 get the last word.

8 THE COURT: Go ahead. And
9 this is the last. Truly the last.

10 ATTORNEY GRIFFITHS: The law
11 says an adequate remedy at law is not
12 other injunctive relief it's money
13 damages. So, we are not asking for money
14 damages. There is no adequate remedy at
15 law. They've not articulated they can get
16 money damages. All this other stuff is of
17 no consequence.

18 THE COURT: Every time the
19 reference is made to adequate remedy at
20 law --

21 ATTORNEY GRIFFITHS: It means
22 money damages.

23 THE COURT: -- it means money
24 damages?

25 ATTORNEY GRIFFITHS: Yes.

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VERONICA HANDY, ESQUIRE
CLERK OF THE COURT**Colloquy**

1 ATTORNEY DE LEON: Your
2 Honor, if I may? If that was the case
3 then the election cases that were decided
4 didn't offer monetary damages, so it
5 cannot be -- adequate remedy of law cannot
6 be monetary damages.

7 ATTORNEY GRIFFITHS: I'd ask
8 for supplemental briefing.

9 ATTORNEY DE LEON: It cannot
10 be monetary damages. All the election
11 cases that have used mandamus did not
12 offer adequate monetary damages. That is
13 not what it means. It means if you have
14 another path to vindicate your rights that
15 is the path that you take, because a writ
16 of mandamus is a extraordinary relief and
17 the court does not like to grant it
18 because of that. That's what it means.

19 In this case they had the
20 petition, they had several avenues they
21 could have pursued. They didn't. Because
22 it would take too much time. And that's
23 why we're here. They themselves said it.
24 "It would take too much time." The
25 Supreme Court said the Legislature should

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VERONICA HANDY, ESQUIRE
CLERK OF THE COURT

Colloquy

1 decide. They disagree because it would
2 take too much time. The Third Circuit is
3 ruling, they don't want to wait, because
4 it would take too much time. We're here,
5 the Legislature -- on the eve of a
6 legislative meeting to decide this same
7 issue, they don't want to wait, it will
8 take too much time. That's why we're
9 here.

10 They are not entitle to any of
11 the relief they are asking because they
12 have not met the requirements.

13 ATTORNEY GRIFFITHS: I guess
14 I'll pass on that last word.

15 THE COURT: Thank you. The
16 Court is gonna take the matter under
17 advisement.

18 ATTORNEY GRIFFITHS: May I
19 too ask for a ruling because we really
20 would like to have a ruling on this one
21 issue?

22 THE COURT: Well, I don't
23 want to give you any false hope, counsel.
24 Your chances of you getting the ruling
25 from this Court before Tuesday is

07/01/2017

VERONICA HANDY, ESQUIRE
CLERK OF THE COURT

Colloquy

1 unlikely. I've got a number of things I'm
2 trying to work on, and I understand that
3 you have an expedited motion, but I don't
4 -- I don't want to give you any false hope
5 that you will get it before the
6 Legislature is apparently going to
7 convene.

8 ATTORNEY GRIFFITHS: And --
9 we really didn't expect a ruling before
10 that, but we will get a ruling at some
11 point; correct? 'Cause it doesn't -- it's
12 not moot.

13 THE COURT: Unless somehow it
14 becomes moot.

15 ATTORNEY GRIFFITHS: But it
16 won't because there is declaratory relief.

17 THE COURT: Okay. So what if
18 -- you're suggesting that even if the
19 Legislature disqualifies Mr. Rodriguez and
20 seats Miss Sarauw that this case is not
21 moot?

22 ATTORNEY GRIFFITHS:
23 Absolutely not. We asked for declaratory
24 relief and it's capable of repetition and
25 evading review and we --

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VERONICA HANDY, ESQUIRE
CLERK OF THE COURT

Colloquy

1 THE COURT: Declaratory
2 relief for what? For --

3 ATTORNEY GRIFFITHS: To make
4 the Board of Elections do their job. And
5 I'm sure this can come up again, so it's
6 declaratory relief also, and it's capable
7 of repetition and evading review. So we
8 plan on pursuing it. Yes. Thank you,
9 Your Honor.

10 THE COURT: Okay. Thanks for
11 letting me know. Okay, the Court takes
12 the matter under advisement.

13 (Court hearing concluded and court
14 adjourned.)
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VERONICA HANDY, ESQUIRE
CLERK OF THE COURT**CERTIFICATE OF REPORTER**

I, KAI M. MULLEY, RPR, an Official Court Reporter II of the Superior Court of the Virgin Islands, do hereby certify that I did report stenographically, in my professional capacity, the **DECLARATORY RELIEF/ORAL ARGUMENTS** held in the matter of **JANELLE K. SARA UW vs. CAROLINE FAWKES, SUPERVISOR OF THE BOARD OF ELECTIONS, ARTURO WATLINGTON, IVY MOSES, ALECIA WELLS, LYDIA HENDRICKS, MAURICE DONOVAN, DIANE MAGRAS-URENA, ST-17-CV-227** taken on **JUNE 22, 2017**; that I was requested to and did reduce to transcript form, the following proceedings, and that the **74** pages, inclusive, comprise a full, true and accurate transcription of the testimony given, objections of counsel, rulings of the Court, and all matters to which same relate.

IN WITNESS WHEREOF, I have hereunto affix my signature this 29TH day of JUNE, 2017.



Kai M. Mulley, RPR
Official Court Reporter II

07/01/2017

VERONICA HANDY, ESQUIRE
CLERK OF THE COURT

SUPERIOR COURT OF THE U. S. VIRGIN ISLANDS
DIVISION ST. THOMAS & ST. JOHN

JANELLE K. SARA UW

CIV. NO. 2017/227

V.

CAROLYN FAWKES, SUPERVISOR OF THE
BOARD OF ELECTIONS, ARTURO
WATLINGTON, IVY MOSES, ALECIA
WELLS, LYDIA HENRICKS, MAURICE
DONOVAN, CARLA JOSEPH, DIANE
MAGRAS-URENA.

ACTION FOR DECLARATORY
AND MANDAMUS RELIEF

**JANELLE SARA UW'S
MOTION FOR A RULING
(CERTIFICATION OF APRIL 8, 2017 SPECIAL ELECTION)**

COMES NOW, JANELLE K. SARA UW, through the undersigned, who requests that this Court issue a ruling and enter an order instructing the members of the St. Thomas & St. John District, Board of Elections ("BOE") to certify the results of the April 8, 2017 Special Election. We also request that this Court declare that the BOE lacked any power except to perform the ministerial duty of certifying the special election within fifteen (15) days as set forth by law.

On June 21, 2017, at the oral argument, this Court explained that it would wait for the 32nd Legislature to render a decision whether or not Kevin A. Rodriquez should be seated as a Senator and then enter a ruling. On June 28, 2017, the 32nd Legislature made that decision and voted not to seat Rodriquez.

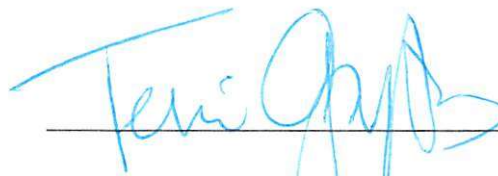
TERRI GRIFFITHS
Attorney at Law

07/01/2017

VERONICA HANDY, ESQUIRE
CLERK OF THE COURT

1 We respectfully request that this Court enter that ruling forthwith without
2 further delay.

3
4 June 29, 2017



5 Terri Griffiths
6 Attorney for PLAINTIFF/ PETITIONER
7 JANELLE K. SARA UW
8 POB 8647
9 St. Thomas, VI 00801
10 (340) 998-8830
11 Terri@Griffiths-Law.com

12
13 CERTIFICATION

14
15 I hereby certify that on the 29TH day of June, 2017 I provided a copy of the
16 above via email to:

17 Julita K. De Leon, Esq.
18 **Attorney for Boards**
19 5600 Royal Dane Mall, Suite 203
20 POB 953
21 St. Thomas, VI 00804

22 Ariel Marie Smith-Francois, Esq.
23 Carol Thomas-Jacobs, Esq.
24 Assistant Attorneys General
25 **Attorneys for Supervisor Fawkes**
26 34-38 KONGENS GADE
27 GERS BLDG
28 ST. THOMAS, VI 00802

_____/s/ Terri Griffiths_____

07/01/2017

VERONICA HANDY, ESQUIRE
CLERK OF THE COURT

Legislature of the Virgin Islands

CAPITOL BUILDING, P.O. BOX 1890
ST. THOMAS U.S. VIRGIN ISLANDS 00804
(808) 774-0860The Honorable
Myron D. Jackson
President, 32nd Legislature

June 29, 2017

Mrs. Barbara Jackson McIntosh
Chairman
Joint Board of Elections
P.O. Box 1499, Kingshill
St. Croix, VI 00851-1499Arturo Watlington, Jr., Esq.
Chair, St. Thomas/St. John Board of Election
Virgin Islands Board of Elections
P.O. Box 6038
St. Thomas, VI 00801

Dear Ms. McIntosh & Attorney Watlington:

The 32nd Legislature of the Virgin Islands advises you that at its Legislative Session held on June 28, 2017, it voted not to admit Senator-elect Kevin A. Rodriguez as a member of the 32nd Legislature because he did not meet the eligibility requirements set forth in section 6, subsection (b) of the Revised Organic Act of 1954, and as a result of that vote, there is currently a vacancy in the 32nd Legislature of the Virgin Islands from the St. Thomas/St. John district.

Prior to the Legislature's vote that Mr. Rodriguez was not a member of the 32nd Legislature, the St. Thomas/St. John Board of Elections took the position that it would not certify the prevailing candidate as the Senator-elect for the St. Thomas/St. John district because Kevin Rodriguez was already certified as the Senator-elect from this district. As a consequence of the Legislature's vote, there is no longer any impediment to the St. Thomas/St. John Board of Elections certifying the prevailing candidate as the winning candidate from the April 8, 2017 special election.

As such, the 32nd Legislature of the Virgin Islands requests that the prevailing candidate be certified as the winner of the April 8, 2017 special election so that the Legislature may swear the candidate in as a member.

Sincerely,

Myron D. Jackson
President
32nd Legislature of the Virgin Islands

cc: The Honorable Kenneth E. Mapp, Governor of the Virgin Islands of the United States
Honorable Nereida R. O'Reilly, Vice-President, 32nd Legislature of the Virgin Islands
Honorable Jean A. Forde, Secretary, 32nd Legislature of the Virgin Islands
Honorable Neville James, Majority Leader, 32nd Legislature of the Virgin Islands
Honorable Positive T. A. Nelson, Minority Leader, 32nd Legislature of the Virgin Islands
Ms. Caroline F. Fawkes, Supervisor of Elections, Election System of the Virgin Islands

EXHIBIT

5

07/01/2017

VERONICA HANDY, ESQUIRE
CLERK OF THE COURT

SUPERIOR COURT OF THE U. S. VIRGIN ISLANDS
DIVISION ST. THOMAS & ST. JOHN

JANELLE K. SARA UW

CIV. NO. 2017/227

V.

CAROLYN FAWKES, SUPERVISOR OF THE
BOARD OF ELECTIONS, ARTURO
WATLINGTON, IVY MOSES, ALECIA
WELLS, LYDIA HENRICKS, MAURICE
DONOVAN, CARLA JOSEPH, DIANE
MAGRAS-URENA.

ACTION FOR DECLARATORY
AND MANDAMUS RELIEF

**JANELLE SARA UW'S
SUPPLEMENTAL MOTION FOR A RULING
(CERTIFICATION OF APRIL 8, 2017 SPECIAL ELECTION)**

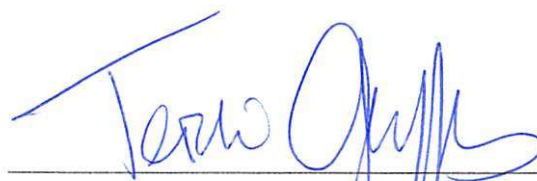
COMES NOW, JANELLE K. SARA UW, through the undersigned, who requests that this Court issue a ruling and enter an order instructing the members of the St. Thomas & St. John District, Board of Elections ("BOE") to certify the results of the April 8, 2017 Special Election at its July 6, 2017 Board Meeting. Arturo Watlington has reported that the Board of Elections is not going to certify the results of the election at its July 6, 2017 meeting and then is going to adjourn for a number of weeks. See, DN Article attached.

The undersigned resent the June 29, 2017 request for a ruling to Julita de Leon, BOE counsel, as it bounced back along with this request.

EXHIBIT

6

1
2
3 June 30, 2017



4 Terri Griffiths
5 Attorney for PLAINTIFF/ PETITIONER
6 JANELLE K. SARA UW
7 POB 8647
8 St. Thomas, VI 00801
9 (340) 998-8830
10 Terri@Griffiths-Law.com

11 CERTIFICATION

12 I hereby certify that on the 30TH day of June, 2017 I provided a copy of the
13 above via email to:

14 Julita K. De Leon, Esq.
15 **Attorney for Boards**
16 5600 Royal Dane Mall, Suite 203
17 POB 953
18 St. Thomas, VI 00804

19 Ariel Marie Smith-Francois, Esq.
20 Carol Thomas-Jacobs, Esq.
21 Assistant Attorneys General
22 **Attorneys for Supervisor Fawkes**
23 34-38 KONGENS GADE
24 GERS BLDG
25 ST. THOMAS, VI 00802

26 _____/s/ Terri Griffiths_____

TERRI GRIFFITHS
Attorney at Law

88th year, No. 23982

FRIDAY, JUNE 30, 2017

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St. Croix Career and Technical Education Center Principal Myrl P.T. Hendricks gives a graduate a hug during Thursday night's certification ceremony at St. Croix Educational Complex. **Page 2**

Election limbo

Elections Board won't meet for weeks to consider certification of special election

Meeting is just days ahead of board's scheduled disbanding

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Venus Williams was driver in fatal car crash

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EXHIBIT