

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

KEVIN A. RODRIQUEZ,)	
)	CASE NO. _____ / 2017
PLAINTIFF,)	
)	
v.)	
)	COMPLAINT FOR
32 nd LEGISLATURE OF THE)	DECLARATORY &
THE VIRGIN ISLANDS, and MYRON)	INJUNCTIVE RELIEF
JACKSON in His Official Capacity as President)	
of the 32 nd Legislature,)	
)	
DEFENDANTS.)	
_____)	

COMPLAINT

COMES NOW Plaintiff Kevin A. Rodriquez (“Rodriquez” or “Plaintiff”), by and through KELLERHALS FERGUSON KROBLIN PLLC, and hereby states and alleges as follows for his Complaint against the 32nd Legislature of the Virgin Islands and Myron Jackson.

PARTIES

1. Plaintiff Rodriquez is a natural person, a United States citizen, and a bona fide resident of the United States Virgin Islands.
2. Defendant the 32nd Legislature of the Virgin Islands (“Legislature”) is a governmental body located in the United States Virgin Islands.
3. Defendant Myron Jackson is a natural person and, on information and belief, a resident of the United States Virgin Islands and is named herein in his official capacity as President of the 32nd Legislature.

JURISDICTION & VENUE

4. This action is brought pursuant to the Revised Organic Act, codified at 48 U.S.C. § 1541 *et seq.*, the Declaratory Judgment Act, codified at 28 U.S.C. § 2201, and the separation of powers doctrine (*see Smith v. Magras*, 124 F.3d 457, 465, 37 V.I. 464, 480 (3d Cir. 1997)) over which this Court has jurisdiction pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1367.
5. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) as St. Thomas is the judicial division in which the Legislature is located and/or is doing business, where the action arose, where most all the witnesses are located, and where Defendants may be served.

FACTS

6. In 2016, Plaintiff Kevin A. Rodriguez successfully ran for a seat on the Virgin Islands Legislature.
7. As part of the election process, the Board of Elections certified Rodriguez as a candidate.
8. The biannual election of senators to the Virgin Islands Legislature occurred in November 2016.
9. Rodriguez was duly elected to the 32nd Legislature by virtue of receiving the sixth highest number of votes and the election was thereafter certified by the Board of Elections.
10. On December 9, 2016, Janelle K. Sarauw and Brigitte Berry filed an action against Caroline Fawkes, in her official capacity as Supervisor of Elections, the Virgin Islands Joint Board of Elections, St. Thomas-St. John, and Kevin A. Rodriguez a.k.a. Kevin A. Rodriguez alleging that Rodriguez was not qualified for a seat on the Legislature because he could not satisfy the Revised Organic Act's three-year residency requirement. The action was docketed as ST-16-CV-734.

11. The Superior Court held a hearing on Sarauw and Berry's Motion for Preliminary Injunction on December 16, 2016 and held a hearing on whether Sarauw and Berry were entitled to permanent injunctive relief on January 4, 2017.
12. In a Memorandum Opinion entered on January 5, 2017, the Superior Court denied Sarauw and Berry's request for permanent injunction and declaratory relief and dismissed the matter in its entirety because Sarauw and Berry failed to succeed on the merits of their claim.
13. Sarauw and Berry appealed the Superior Court's dismissal of the Complaint. On appeal, the Supreme Court of the Virgin Islands reversed the Superior Court's decision and entered an Order on January 8, 2017 enjoining Rodriquez from taking the oath of office.
14. On remand, pursuant to the Supreme Court's January 8, 2017 Memorandum Opinion and Order, the Superior Court entered an Order on January 9, 2017 enjoining Rodriquez from taking the oath of office for the 32nd Legislature.
15. The swearing-in ceremony for new senators was held on January 9, 2017, the first day of the 32nd Legislature's term.
16. Rodriquez was prevented from taking a seat on the 32nd Legislature to which he had been duly elected.
17. Specifically, the Legislature refused to call Rodriquez's name during the ceremony and refused to seat him even though Rodriquez had been duly elected to a senatorial seat.
18. Rodriquez wrote the Legislature on January 9, 2017 requesting that the Legislature and not the Superior Court decide whether he is entitled to take his seat. *See Exhibit A.*
19. The Legislature failed to respond directly and has indicated it would wait for further court action before allowing Rodriquez to take his seat.

COUNT I: VIOLATION OF REVISED ORGANIC ACT

20. Plaintiff restates and re-alleges the foregoing paragraphs as if set forth herein.
21. Section 6(g) of the Revised Organic Act provides, in part: “The legislature shall be the sole judge of the elections and qualifications of its members, shall have and exercise all the authority and attributes, inherent in legislative assemblies, and shall have the power to institute and conduct investigations, issue subpoena to witnesses and other parties concerned, and administer oaths.”
22. The “Revised Organic Act ‘divides the power to govern the territory between a legislative branch, an executive branch, and a judicial branch,’ reflecting that ‘Congress ‘implicitly incorporated the principle of separation of powers into the law of the territory.’” *Bryan v. Fawkes*, 61 V.I. 201, 212, 2014 WL 4244046, at *3 (V.I., 2014) quoting *Kendall v. Russell*, 572 F.3d 126, 135 (3d Cir. 2009); *Smith v. Magras*, 124 F.3d 457, 465 (3d Cir. 1997)) (internal citations omitted).
23. Rodriguez was certified to run as a candidate for the 32nd Legislature and was duly elected to a seat by popular vote.
24. Nevertheless, Rodriguez was prohibited from taking the oath of office and from being formally seated on the Legislature despite fairly and duly being voted into that position.
25. Rodriguez is entitled to a determination and judgment declaring that the Virgin Islands Legislature has exclusive jurisdiction over the above-captioned action pursuant to § 6(g) of the Revised Organic Act and that the Supreme Court and Superior Court’s orders enjoining Rodriguez from taking the oath of office violated separation of powers principles.

26. Specifically, any power the Virgin Islands may have had to resolve any issue with regard to Rodriquez's qualifications for office was dissolved once the 32nd Legislature was convened on January 9, 2017.
27. The 32nd Legislature and its President Senator Jackson, were required to permit Rodriquez to take his seat pursuant to the Revised Organic Act and particularly 48 U.S.C. § 1572.
28. Moreover, the Legislature has no basis for waiting for court action as any decision as to the membership of the Legislature is now a non-justiciable political question for resolution by the 32nd Legislature. Said power has not been delegated by the Legislature and thus remains for its determination. Accordingly, reliance on further court action violates the Separation of Powers Doctrine and moreover the Board of Elections no longer has the authority to decertify Plaintiff. *See e.g. Mapp v. Lawaetz*, 882 F.2d 49, 51 (3d Cir. 1989).
29. Rodriquez is therefore entitled to declaratory and injunctive relief requiring the 32nd Legislature to permit Rodriquez to take his seat on the Legislature and carry out the official duties he was elected to perform. He was duly elected and certified to serve in the Legislature and there is nothing in the law to bar him from taking his seat in the Legislature. Rather the Revised Organic Act requires he be seated.

WHEREFORE, Plaintiff demands declaratory judgment and injunctive relief that declares the 32nd Legislature to possess the sole authority and power to determine its membership, declares any injunction entered by the Superior Court dissolved, and orders the 32nd Legislature and its President to seat Plaintiff as a member of the Legislature as required by the Revised Organic Act.

Rodriguez v. The 32nd Legislature
Complaint

Case No. ____ / 2017
Page 6

Respectfully,

Dated: January 10, 2017

/s/ Christopher Allen Kroblin _____
CHRISTOPHER ALLEN KROBLIN, ESQ.
MARJORIE WHALEN, ESQ.
V.I. Bar Nos. 966 & R2019
KELLERHALS FERGUSON KROBLIN PLLC
Royal Palms Professional Building
9053 Estate Thomas, Suite 101
St. Thomas, V.I. 00802
Telephone: (340) 779-2564
Facsimile: (888) 316-9269
Email: ckroblin@kellfer.com
mwhalen@kellfer.com

KEVIN A RODRIQUEZ

Senator-elect – 32nd Legislature of the Virgin Islands
P. O. Box 9481
St. Thomas, VI 00801
(340) 473-9660
kevinarodriquez@gmail.com

January 9, 2017

VIA HAND DELIVERY

Honorable Myron Jackson, President
32nd Legislature of the Virgin Islands
Legislature of the Virgin Islands
St. Thomas, VI 00802

Dear Senate President Jackson:

As you are already aware, the People of the Virgin Islands elected me as a member of the 32nd Legislature of the Virgin Islands on November 8, 2016. The Board of Elections of St. Thomas and St. John certified my election as a Senator on November 22, 2016. Under the Revised Organic Act of the Virgin Islands, 48 U.S.C. § 1571, et seq., I have a *prima facie* claim to be seated as a member of the 32nd Legislature of the Virgin Islands.

Today, the 32nd Legislature of the Virgin Islands was sworn in and seated. Although I was ready, willing, and able to take my oath of office as a Senator of the Virgin Islands, I was wrongfully denied my right to be seated as a member of the 32nd Legislature because of a “sour grapes” lawsuit by Janelle Sarauw, who lost the election, and one of her campaign volunteers. Although the Superior Court dismissed Ms. Sarauw’s case and dissolved the injunction on Thursday, January 5, 2017, the Virgin Islands Supreme Court entered a last-minute decision – hours before I was to be sworn in today – reinstating the injunction and remanding the case back to the Superior Court. But in footnote 15 of its opinion, the Supreme Court implied that the courts may no longer have jurisdiction over this case once the 32nd Legislature comes into existence.

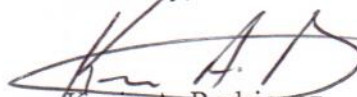
Now that the 32nd Legislature has been sworn and seated, the Superior Court no longer has jurisdiction to determine my bonafides as a Senator of the Virgin Islands. The Revised Organic Act clearly provides that the Legislature – not the courts – shall be the sole judge of the elections and qualifications of its members. 48 U.S.C. § 1572(g). It is therefore for the Legislature – and the Legislature only – to determine my qualifications to be seated as a member of the 32nd Legislature.

Letter to Senate President Myron Jackson
January 9, 2017
Page 2

Thus, the decision of whether I should be sworn-in and seated as a member of the 32nd Legislature **now rests with the members of the V.I. Legislature and is no longer with the courts.** I therefore respectfully request that I be immediately sworn in as a member of the 32nd Legislature of the Virgin Islands so that I can assume the duties of the office to which I have been duly elected by the People of the Virgin Islands. To do otherwise would be to overturn the results of the November 8 election and frustrate the settled choice of the People of the Virgin Islands. I look forward to your prompt response. If I do not hear from you by January 10, 2017, I shall have no other option, regrettably, than to take your silence as a denial of my right to take my seat in the 32nd Legislature of the Virgin Islands.

Your immediate response is requested.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kevin A. Rodriguez', with a long horizontal flourish extending to the right.

Kevin A. Rodriguez,

Senator-elect

32nd Legislature of the Virgin Islands

cc: 32nd Legislature Senators

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS
(b) County of Residence of First Listed Plaintiff
(c) Attorney's (Firm Name, Address, and Telephone Number)

DEFENDANTS
County of Residence of First Listed Defendant
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.
Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
PTF DEF
Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
Incorporated or Principal Place of Business In This State
Incorporated and Principal Place of Business In Another State
Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)
CONTRACT REAL PROPERTY
TORTS CIVIL RIGHTS PRISONER PETITIONS
FORFEITURE/PENALTY LABOR SOCIAL SECURITY
BANKRUPTCY FEDERAL TAX SUITS
OTHER STATUTES

V. ORIGIN (Place an "X" in One Box Only)
1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from another district (specify)
6 Multidistrict Litigation
7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
Brief description of cause:

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE DOCKET NUMBER

DATE SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY
RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553

Brief Description: Unauthorized reception of cable service

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the summons unexecuted because _____; or

Other *(specify)*: _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*: _____ .

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: