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Supreme Court Dismisses Lawsuit Claiming Steven Payne Was Unlawfully Expelled From Legislature

The court rejects claims against the expulsion process, citing legislative sovereignty and immunity

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Former Senator Steven Payne, Sr. By. V.I. LEGISLATURE

The V.I. Supreme Court on Friday tossed out the lawsuit filed by Steven Payne and Noellise Powell which alleged that the former senator's [expulsion from the 34th Legislature](#) in July of 2022 was unlawful.

Having wrested the case from the Superior Court after months of dormancy, and what was deemed to be an “inadequate” judicial process “due to failure of the Superior Court to rule on the immunity claims while nevertheless issuing rulings on non-immunity claims and setting the matter

for an imminent trial,” the Supreme Court began by considering a motion filed by the Legislature to dismiss the matter entirely.

That motion asserted three constitutional defenses against Mr. Payne and Ms. Powell’s lawsuit. The first, of immunity under the “speech or debate clause” of the Revised Organic Act, was accepted by the Court as applicable to the president of the Senate or individual legislators, but not to the legislature as a whole. The plaintiff’s claims for monetary damages were dismissed due to a finding of sovereign immunity for legislative action – the expulsion of a sitting senator – that constitutes a “uniquely governmental function that can never be performed by a private person.”

Third, the Court maintained that while it certainly does have the right to adjudicate certain disputes over whether individuals are eligible or qualified to hold legislative office, “it does not necessarily follow that all such cases are justiciable.”

Mr. Payne was “a sitting member of the Legislature expelled by the Legislature pursuant to a procedure adopted by the Legislature more than a year after such member was sworn-in to that office.” The reason for his expulsion, the Court noted, was – “at least as found by the Legislature – violating his oath of office and breaching the ethical rules promulgated by the Legislature.”

Because the legislature did not attempt to bar Mr. Payne from being seated as an elected representative, they had not “established an additional qualification for legislative office in contravention of section 6(b) of the Revised Organic Act.” Since Mr. Payne was duly sworn into office like the rest of the 34th Legislature, and only subsequently expelled by his colleagues after a determination that he violated the body’s ethics code, the legislature’s action was an effort “to regulate the conduct of a member who had already occupied such office.”

Further, the court disagreed with Mr. Payne and Ms. Powell’s argument that the legislature has no power to expel duly seated members, and that a recall is the only available option for the involuntary removal of an elected official during their term in office. The Revised Organic Act, the Court held, gave the legislature broad power and authority over its assemblies. That power, the court said, has been “widely understood” as inherent to legislative bodies, dating back to seventeenth-century England, and remaining part of American common law.

The court illustrated the absurdity of imagining that the recall provisions under the ROA serve as the exclusive means to remove an elected official from office, as Mr. Payne and Ms. Powell attempted to argue. According to its published opinion, “a first-term legislator charged with first-degree murder one week after being sworn-in and detained while awaiting trial would remain a member of the Legislature for an entire year, drawing a salary while in jail, as no recall election may be called during the first year of that legislator’s term of office,” under Mr. Payne’s interpretation of things.

The drafters of the ROA, the Court held, “could not possibly have intended” for allowing the limited exercise of recall power by voters to “remove the authority of the Legislature to wield its inherent expulsion power.”

Ultimately, Mr. Payne’s complaint that the dramatic amendment of Bill 34-0287 – which initially called for sanctions including a 50-day suspension before seven senators proposed that Mr. Payne be removed from office entirely – was arbitrary and capricious was deemed to be outside of the court’s purview.

Weighing in on such claims, the opinion said, would require “that this Court substitute its own judgment for that of the 14 senators who voted to expel Payne. Because doing so would infringe

on the authority of the legislature to administer its own affairs as a co-equal branch of government, we grant the motion to dismiss the lawsuit in its entirety as nonjusticiable.”

With this matter dismissed with prejudice, the legislature must now focus on defending [itself against a lawsuit](#) filed by the staffer who accused Mr. Payne of sexual assault. Dene Dessuit claims that apart from Mr. Payne’s harassment, former Senate President Donna Frett-Gregory, and the legislature itself, acted improperly following the filing of her official complaint.

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