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Primary Voting in Jeopardy as Court Ruling Strips Elections System of Hosting Authority

With primaries at risk, U.S. Virgin Islands seeks urgent legislative remedy with only two weeks ahead of the May 31st casting of lots

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Citizens residing on St. Croix voting early in October, 2020. By. ERNICE GILBERT, V.I. CONSORTIUM

“No primary election can be conducted by the Office of the Supervisor unless the legislature addresses the issue,” said Elections Supervisor Caroline Fawkes on Monday, as she informed lawmakers on the Committee of the Whole that primaries scheduled for this year are now in jeopardy.

The issue stems from a [ruling made by the District Court](#) at the beginning of the year, in which Chief Judge Robert Molloy found in favor of plaintiffs Republican National Committee and the Republican Party of the Virgin Islands. Several sections of Title 18 of the Virgin Islands Code, which relates to the conduct of elections, were deemed unconstitutional. As the Legislature's legal counsel explained, the basis for Judge Molloy's decision was the vague nature of the sections in question.

For the Election System of the Virgin Islands, the classification of Title 18, Section 232 is the most worrying. Section 232 reads as follows: "Party primary elections shall be held in the Virgin Islands on the first Saturday of August for the purpose of choosing candidates for nomination to public offices to be voted for at the ensuing general election.

"The Board of Elections will be responsible for certifying the process to be used by any political party to select party officers and candidates for public office."

The second sentence in that section, Ms. Fawkes explained, was found to be "unconstitutionally vague" by the court, ruling that it "violates constitutional due process by failing to provide a means of redress." Therefore, the provision is invalid because as the Supervisor of Elections, Ms. Fawkes said she must consider the unconstitutional sections as "null and void."

Following the ruling from the District Court in January, the Board of Elections waited until March 26 to decide to formally write to the AG's office to inquire about the ability to appeal the ruling. The letter was issued on April 15, but both the board meeting and correspondence occurred well past the 30-day period within which an appeal must be filed, leaving any hope of appeal time-barred. Chair of the Board Alecia Wells was absent from the session due to "unforeseen circumstances", and therefore was not on hand to offer any insight on the board's thought process in this regard.

That revelation from Ms. Fawkes regarding the delayed response by the Board of Elections prompted nearly every lawmaker present to chastise the Supervisor of Elections for not acting with alacrity. Senator Carla Joseph scolded her, saying she was "disappointed" with how the matter was handled, while Senator Alma Francis Heyliger wondered why such a time-sensitive matter was not made a priority.

With no appeal on the cards, the Elections Supervisor is now legally barred from holding primary elections unless the laws are amended. Senate President Novelle Francis, however, noted a provision in the law that prohibits any legislative changes being made within six months of a scheduled general election. "In these proceedings, however, we cannot do anything that will impact...we're in the election cycle. So we can't make any decisions that will be impacted in the upcoming elections," said Sen. Francis.

A question from Senator Bolques to legal counsel, however, revealed that an exception to this rule is if the new amendments to election laws come as a result of efforts to comply with an order issued by a court of competent jurisdiction. Although Ms. Fawkes continued to argue that there has been precedent to support tweaks to Title 18 that could come into force in time to impact the first activity for the primaries – the casting of lots on May 31 – Sen. Francis noted that current timelines were not conducive for any changes to be promulgated within the approximately 14 working days between now and then. "We have no date for session at this time, and then it has to be voted upon and voted out of session and signed by the governor of the territory," he noted.

Even though at this time the Elections System is now legally prohibited from holding primary elections, Ms. Fawkes said that her office is pressing on with the usual preparatory measures. That

includes reminding aspirants that the period to submit nomination petitions begins on Tuesday, May 14th. Senator Marise James was the first to question whether these actions were permissible based on Judge Malloy's ruling. According to Ms. Fawkes, her office will continue the primary election process "until we get to a deadline that we cannot [anymore]" as the nomination process is for "both party and non-party offices." Sen. Bolques agreed that the Office of the Elections Supervisor should continue to prepare "regardless of what is before us."

The court's January ruling shifts responsibility for primary elections from the Elections System to individual political parties. That new responsibility comes with new costs to be borne - approximately \$250,000, which was traditionally shouldered by the Office of the Elections Supervisor. Senator Dwayne DeGraff noted that the new status quo places a significant financial burden on small political organizations. "Unless they can go ahead and generate \$250,000 to put on their primaries, I think some major decisions have to be made." Voters, he said, are at risk of being disenfranchised. However, Independent senators like Mr. DeGraff, Franklin Johnson, Samuel Carrion and Alma Francis Heyliger are unaffected by the shift, since they do not have any primary process to contend with.

Senator Kenneth Gittens wondered why the Elections System was still co-ordinating primary elections in 2024, given a 2016 injunction filed in the Superior Court by the Democratic Party which should have handed control back to the territory's political parties. "The parties were to come up with their process," noted Sen. Gittens, yet "here it is we're sitting to discuss again why taxpayers dollars are going towards a party primary to elect party officers." Ms. Fawkes admitted that no appeal was made of the 2016 ruling, but she did not offer a reason as to why the process did not change then. According to Gittens, "it's been forever that it is clear that the parties are responsible for their own primary....here we are again in a tailspin." The entire discussion, he argued, was "creating confusion."

If – as currently seems likely – there are no changes made to the territory's elections law ahead of this month, and if political parties don't host their own primary elections, Ms. Fawkes anticipates that "everyone goes to the general election." However, current law allows for only seven candidates from any one party to be senatorial candidates in each district. Legal counsel for the Legislature clarified in response to a question from Francis Heyliger that the parties would have to, in some fashion, select seven representatives out of their pool of hopefuls to run in the general elections.

Gittens introduced several amendments to bring Title 18 in compliance with Judge Molloy's ruling, however he noted that none of them were intended to impact this year's electoral process. The amendments, which were not discussed during Monday's session, are expected to come into force for the 2026 election cycle.

No votes are taken during Committee of the Whole meetings, but as he adjourned the day's proceedings, Francis expressed hope that at "some very near date in the future," lawmakers could "reconvene in order to be able to address this issue of the election and our primary."