

The Virgin Islands Consortium

Court Rejects Immediate Recertification Bid but Keeps McClafferty Injunction Fight Alive

McClafferty was denied immediate ballot reinstatement because his emergency motion was procedurally deficient, but a hearing remains set for Aug. 26 as V.I. DOJ advised the Elections Board to hire independent counsel over significant potential conflicts.

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Brett Matthew McClafferty

A federal judge has denied Brett McClafferty's emergency attempt to immediately return to the Delegate to Congress ballot, but scheduled an August 26 evidentiary hearing on his request for a preliminary injunction.

The July 16 ruling did not decide whether McClafferty's disqualification was lawful. U.S. District Judge Evan Rikhye instead found that his request for a temporary restraining order was procedurally deficient because the court record did not show that the motion had been properly served on the defendants and McClafferty did not submit the documentation required for emergency relief without notice.

The decision comes as Attorney General Gordon Rhea has advised the V.I. Board of Elections to retain independent counsel because the Department of Justice's involvement could create potential conflicts. DOJ is currently prosecuting McClafferty in an unrelated criminal matter, while the Board's disqualification decision could also be referred to the department for investigation.

McClafferty, who is representing himself, filed his emergency motion on July 9. He asked the District Court to stop Supervisor of Elections Caroline Fawkes and Board of Elections Chairman Raymond Williams from maintaining his disqualification and to order election officials to immediately certify his candidacy as valid.

He also sought placement or continued inclusion of his name on official candidate lists and voter-information materials while the underlying lawsuit proceeds.

Because there was no indication that McClafferty had perfected service of the motion on the defendants, the court treated it as an *ex parte* request — one seeking relief before the opposing parties had an opportunity to respond.

Federal rules permit that form of emergency order only when specific facts presented through an affidavit or verified complaint clearly demonstrate that immediate and irreparable harm will occur before the opposing party can be heard. A written certification must also describe efforts made to provide notice or explain why notice should not be required.

The court found that McClafferty supplied neither an affidavit nor a verified complaint establishing the immediate harm he would suffer before the defendants could respond. He also did not submit a written certification detailing his efforts to notify the defendants or explaining why notice should be waived.

"Accordingly, Plaintiff's motion for *ex parte* relief is procedurally deficient," the court stated.

The judge also found that McClafferty had not alleged specific facts clearly demonstrating what immediate and irreparable harm would occur before Fawkes and Williams could present their opposition.

The emergency temporary restraining order was therefore denied.

The order does not resolve McClafferty's broader preliminary-injunction request. Citing the public interest and the nature of the relief sought, the court scheduled an evidentiary hearing for August 26 at 10:00 a.m. in St. Thomas Courtroom 1.

McClafferty must serve the order on the defendants and file notice with the court by July 24 detailing when and how service was completed.

Both sides must electronically submit their proposed exhibits through the court's secure file-sharing system by August 21. Hard-copy exhibits will be permitted only upon a showing of extenuating circumstances.

VI DOJ Urges Board to Retain Independent Counsel

Three days before the court's ruling, Attorney General Rhea wrote to Ms. Fawkes recommending that the Elections Board immediately obtain independent counsel.

Mr. Rhea said it would be imprudent for DOJ to investigate the Board's decision while simultaneously defending the same action in court if the signature matter is referred to the department.

The attorney general also noted that the DOJ Criminal Division in the St. Thomas District is prosecuting McClafferty in an unrelated matter.

Based on the pending criminal case and the possibility of an inquiry into the disqualification decision, Mr. Rhea said DOJ's representation of election officials could appear biased or prejudiced against McClafferty.

"VIDOJ can decline representation in matters where the impartiality and integrity of the Department may be questioned," the attorney general wrote.

Mr. Rhea said protecting voter confidence is particularly important during an election year.

He cited Title 18, Section 51 of the Virgin Islands Code and the Virgin Islands Supreme Court decision in *Moses v. Fawkes* as authority for the Elections Board to retain independent counsel to represent it in appeals from its decisions or orders.

"Given the pending motion for emergency relief, and potential conflict concerns, the Virgin Islands Department of Justice recommends that the Elections Board immediately seek and retain independent counsel to defend its interests in this matter," Mr. Rhea wrote.

McClafferty Challenges June 15th Disqualification

McClafferty filed his federal lawsuit on July 8, challenging the Elections Board's June 15 decision to disqualify him as a candidate for Delegate to Congress.

According to DOJ's letter, the Board based its decision on an investigation into alleged irregularities involving nomination-petition signatures collected on St. Croix.

McClafferty is seeking declaratory and injunctive relief, as well as other damages he alleges resulted from the disqualification.

His emergency motion says an independent Delegate to Congress candidate was required to submit at least 100 valid signatures from the St. Thomas-St. John District and another 100 from the St. Croix District.

McClafferty says he initially submitted 127 signatures for St. Thomas-St. John and 106 for St. Croix.

After both districts determined that he did not initially have enough valid signatures, they issued notices allowing him to correct the deficiencies. McClafferty alleges that the St. Croix notice referenced a three-day period to cure the deficiencies but imposed a two-day deadline.

He says he later submitted approximately 288 additional signatures during the cure period, bringing his combined total to approximately 521 signatures.

According to the motion, the deputy supervisors for both districts then notified him in writing that he had successfully corrected all deficiencies.

McClafferty alleges that Ms. Fawkes subsequently delayed the certification deadline twice while investigating six emailed complaints about how his campaign collected signatures on St. Croix.

His motion characterizes the complaints as unnotarized and says several were undated and unsigned.

On June 15, Ms. Fawkes issued a notice disqualifying McClafferty, stating that her investigation determined that the “integrity” of his petitions had been compromised, according to his court filing.

McClafferty submitted a notice of appeal to the Board of Elections that same day and filed a supporting brief on June 30.

His motion says Mr. Williams convened an emergency Board of Elections meeting on July 1. The board reportedly entered executive session for three hours before returning to public session and voting 7-2, with one abstention, to uphold the disqualification.

McClafferty Claims Election and Constitutional Violations

McClafferty’s motion argues that his disqualification imposed candidate requirements beyond those authorized under federal law and violated Virgin Islands election statutes.

He contends that once his petitions were examined, accepted and the deficiencies cured, they were deemed valid unless a timely challenge was filed in District Court within the period prescribed by law.

McClafferty argues that Ms. Fawkes lacked authority to conduct a unilateral investigation after the cure process or independently set aside his petitions. He contends that the Board of Elections has sole statutory authority to investigate election fraud, irregularities and violations for possible referral to DOJ.

The motion also alleges violations of his First and Fourteenth Amendment rights, including political expression, association, ballot access, equal protection and due process, as applied through the Revised Organic Act.

McClafferty said immediate relief was necessary because of approaching campaign-finance deadlines, the August 1 primary and later ballot printing for the general election.

He also claimed that the disqualification would interfere with his ability to campaign, participate in debates and forums, conduct fundraisers and appear on ballots or voter materials.

The court's July 16 order did not decide any of those claims. They remain part of the dispute to be considered as the preliminary-injunction proceedings continue.