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Election Officials Ask Court to Dismiss McClafferty Suit, Defend Delegate Ballot Disqualification

Election officials say seven voters complained that nomination petitions were circulated in a way that left them believing they were supporting another candidate. Fawkes and Williams argue the resulting investigation and disqualification were lawful.

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Matthew McClafferty, left, stands with David Greaux; Elections Supervisor Carolyn Fawkes appears at upper right and Board of Elections Chairman Raymond Williams at lower right.

Elections Supervisor Carolyn Fawkes and Board of Elections Chairman Raymond Williams are asking the District Court to reject Matthew McClafferty's effort to regain a place on the

November Delegate to Congress ballot and dismiss his lawsuit entirely, arguing that seven voter complaints justified an investigation into his nomination petitions and that election officials acted within their statutory authority when they disqualified him.

Attorneys for Ms. Fawkes and Mr. Williams filed separate motions Friday opposing Mr. McClafferty's request for a preliminary injunction and seeking dismissal of the case. The filings come ahead of an August 26 hearing before U.S. District Judge Evan Rikhye.

Mr. McClafferty previously sought emergency relief through a temporary restraining order. In opposing his latest request, attorneys for the election officials argue that the same underlying deficiencies that defeated that effort — including the lack of an “affidavit or verifiable complaint establishing immediate and irreparable injury” — should also prevent him from obtaining a preliminary injunction.

Their defense of the disqualification centers largely on complaints received about the circulation of Mr. McClafferty's nomination petitions.

According to the motion, his nomination packet contained a notarized affidavit from Jonathan James Jr. stating that he circulated the petition for Mr. McClafferty and that the people who signed it did so with full knowledge of its contents.

Election officials say complaints from at least seven people subsequently raised questions about those assertions. Six voters, identified in the filing, complained between early June and early July that Mr. McClafferty's nomination petitions on St. Croix were actually being circulated by David Greaux. They alleged that Mr. Greaux made the nomination paperwork appear to be for his own candidacy and said they would not have signed had they known they were supporting Mr. McClafferty.

All six asked the Elections System to remove their signatures from Mr. McClafferty's nomination petition. A seventh person reportedly contacted Ms. Fawkes in August with similar allegations and the same request.

The investigation launched after those complaints corroborated what the motion describes as the voters' “materially identical” claims.

Election officials contend that Ms. Fawkes had “broad and mandatory statutory authority” under 18 V.I.C. § 411(a)-(c) to investigate the complaints and determine whether Mr. McClafferty had been validly nominated. The statute, according to the filing, authorizes the Elections Supervisor to “examine nomination petitions forthwith upon receipt and to ascertain whether candidates have been validly nominated.”

The defendants also point to a candidate verification form signed by Mr. McClafferty that authorized the Elections System to audit his nomination paperwork and verify its accuracy. The form also advised him that submission of the nomination documents did not guarantee qualification as a candidate.

That authorization, the motion argues, further supports Ms. Fawkes's power to “verify and investigate the validity and integrity of Plaintiff's nomination submissions.”

Taken together, the apparent discrepancy over who circulated the petitions and the complaints from voters who said they were misled about whom they were supporting provided sufficient reason to question the validity of Mr. McClafferty's nomination paperwork, election officials

argue.

The defendants reject Mr. McClafferty's contention that Ms. Fawkes was required to obtain judicial authorization before disqualifying him. They argue that Virgin Islands law permits the Elections Supervisor to investigate candidate eligibility without first seeking court intervention.

They also dispute his characterization of the investigation as the imposition of an additional qualification for federal office. Rather, the filing describes the review as a "routine, procedural ballot-access function" aimed at determining whether the nomination requirements had actually been satisfied.

Election officials similarly challenge Mr. McClafferty's allegations of mail and wire fraud. According to their motion, his claims fail to "identify...the specific fraudulent statements or omissions, who made them, to whom they were made, when and where they were made, how they were transmitted...why they were false or misleading...or how any such communication furthered a scheme to defraud."

Without allegations detailing the "who, what, when, where and how" of the purported wrongdoing, the defendants argue that Mr. McClafferty has not adequately pleaded his fraud and conspiracy claims.

They also contend that he cannot demonstrate the irreparable injury necessary for preliminary injunctive relief. Because "a properly disqualified candidate...lacks the legal right to appear on the ballot in the first place," the motion argues, maintaining his disqualification cannot constitute irreparable harm if the Elections System's decision was lawful.

A second motion goes further, asking the court to dismiss Mr. McClafferty's lawsuit outright for failure "to state a claim upon which relief can be granted" and failure "to plead with particularity."

Election officials argue that the evidence does not support Mr. McClafferty's claims of statutory and constitutional violations, an unauthorized Elections System investigation or a racketeering conspiracy. On those grounds, they are asking the court to dismiss the claims against Ms. Fawkes and Mr. Williams.

The parties are [scheduled](#) to argue their positions before Judge Rikhye on August 26.