

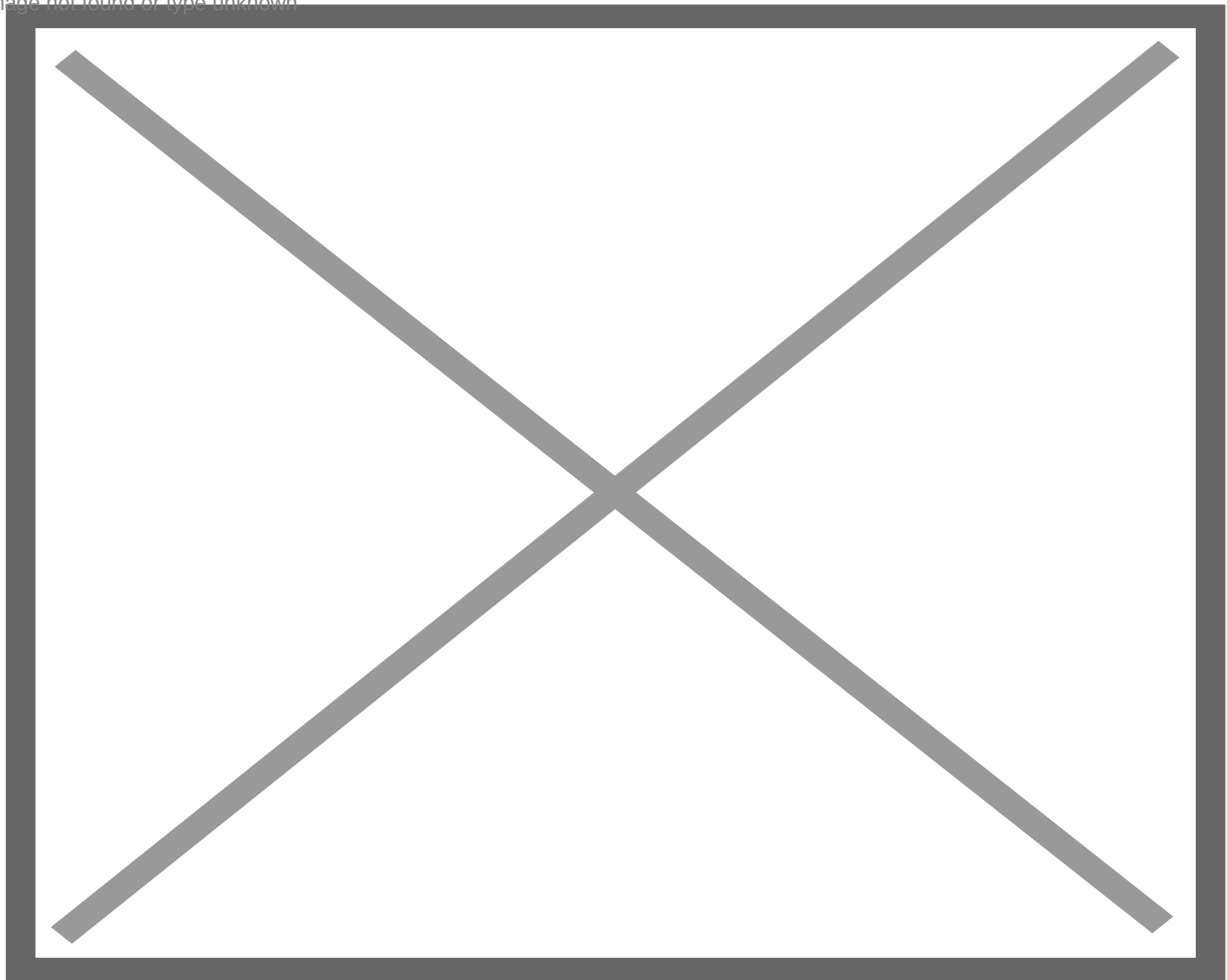
V.I. AG Says Elections Supervisor Can Investigate and Disqualify Candidates, but Due Process Is Required

Attorney General Gordon Rhea says the Elections Supervisor may investigate nomination filings and disqualify ineligible candidates until ballots are printed, while affected candidates must receive notice, an appeal opportunity and access to court review.

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Attorney General Gordon Rhea. By. V.I. LEGISLATURE.

Attorney General Gordon Rhea has concluded that the Supervisor of Elections has the authority to investigate candidate nomination filings and disqualify candidates deemed ineligible, while also finding that those removed from the ballot are entitled to notice, an opportunity to appeal and access to the courts.

The August 24 legal opinion responds to a [second request](#) from Governor Albert Bryan Jr. for clarification on several areas of Virgin Islands election law. The governor's inquiries followed questions raised by Matthew McClafferty, whose candidacy for Delegate to Congress was disqualified and who is now challenging that decision in federal court.

At the center of the dispute is whether Elections Supervisor Caroline Fawkes [has authority not](#) only to review nomination paperwork, but to investigate alleged irregularities and remove candidates based on what those inquiries uncover.

Mr. Rhea concluded that she does.

"The Legislature intended for the Supervisor to be able to exercise independent judgment," the attorney general wrote. He said the Supervisor's responsibility to determine whether nomination paperwork and candidate eligibility are valid "necessarily includes the authority to investigate."

Mr. Rhea further concluded that the Board of Elections' primary role in the process is to "hear and decide appeals of the Supervisor's determinations."

Citing a 2014 V.I. Supreme Court decision, he said the Supervisor may investigate candidates and disqualify those found ineligible until ballots have been printed.

The opinion also addresses another issue raised by Mr. McClafferty: whether the Board of Elections may deliberate over a candidate's disqualification in closed session.

Mr. Rhea said it may, depending on the circumstances.

Evidence relied upon in reaching a decision "should generally be taken in public session," he wrote. However, "depending on the particular circumstances of the case, holding the deliberation in closed session may also be appropriate" under the Government in the Sunshine Act.

At the same time, the attorney general emphasized that candidates removed from the ballot retain several "procedural protections."

A disqualified candidate is entitled to be notified of the reasons for the decision and has the right to appeal to the Board of Elections. During that appeal, the candidate "is entitled to a reasonable opportunity to present argument and evidence," Mr. Rhea wrote, citing due-process considerations.

Candidates may also seek judicial review after exhausting the available administrative process.

The opinion draws an additional distinction involving nomination petition signatures.

Mr. Rhea said challenges to individual signatures should not, by themselves, invalidate a candidacy if enough valid signatures remain to satisfy the statutory threshold. But complaints involving surplus signatures may still trigger a broader inquiry.

"Complaints about surplus signatures could lead to the disqualification of a candidate on other grounds if those complaints led the Supervisor to discover the candidate was ineligible for other reasons," he wrote.

Mr. Rhea also concluded that the territory's existing signature requirements are reasonable and do not impose an unconstitutional burden on ballot access.

The most demanding requirement under current law applies to candidates seeking territorywide office, who must gather 100 valid signatures from each of the territory's two districts within approximately one month.

Mr. Rhea characterized that as requiring a candidate to obtain the support of roughly "two thirds of one percent of registered voters," which he found to be a reasonable demonstration of electoral support.

The opinion has already drawn responses from candidates affected by the Elections Supervisor's disqualification decisions.

Jed JonHope, whose candidacy for Delegate to Congress was also disqualified, welcomed Mr. Rhea's emphasis on procedural protections.

The reaffirmation of due-process rights for disqualified candidates was "a breath of fresh air for election integrity in the U.S. Virgin Islands," Mr. JonHope said.

"I look forward to having my day in court and to being on the ballot in November," he continued.

Mr. JonHope has said he intends to challenge his disqualification in court.

Mr. McClafferty's case, meanwhile, is moving toward a Wednesday hearing on his request for a preliminary injunction that would prevent election officials from enforcing his removal from the ballot.

Ahead of that hearing, U.S. District Judge Evan Rikhye denied a request by the defense to allow witnesses to appear virtually, requiring the parties and witnesses to appear in person in the St. Thomas courtroom.

Mr. McClafferty has also formally notified the court of Mr. Rhea's August 24 opinion.

He is asking Judge Rikhye to prevent the defense from presenting witnesses or evidence concerning the substantive findings of the Elections Supervisor's investigation, as the court prepares to consider whether his disqualification should remain in effect.