

The Virgin Islands Consortium

Judge Lewis Sends Hansen Case Back To Superior Court

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Ernice Gilbert **October 02, 2014**



Update: A new date of October 7, 2014 has been issued for the Brian v. Fawkes remand hearing case. The article been update to reflect the new date.

Just when it seemed the Alicia "Chucky" Hansen eligibility, or lack thereof, court battle was over, District Court of the Virgin Islands Chief Justice Wilma Lewis, the same judge who [granted Sen. Hansen a Temporary Restraining Order and Permanent Injunction](#) last week, has now granted Board of Elections St. Croix District Chairman, Adelbert Bryan's Motion for Remand to the Superior Court of the Virgin Islands, giving the seemingly endless litigation a new lease of life.

In simple terms, Judge Lewis has now decided Sen. Hansen's eligibility to be on the Nov. 4 ballot, not her eligibility to serve as a senator, should be handled by the local courts. The motion was granted on Wed., Oct. 1 and remand appearance has been set for Oct. 7, at 2 p.m.

Indeed, separate and apart from federal issues regarding Hansen's eligibility to run for, and hold senatorial office, there remains the issue of ballot access -- an issue governed by the Virgin Islands Code.

In the 14-page document, which includes Judge Lewis' opinion and order, Lewis opines that while she believes "there are federal issues of great significance that are critical to the ultimate resolution of Sen. Hansen's eligibility to be a member of the legislature," the case must be remanded to the Superior Court because Bryan, in his Emergency Motion for Remand, maintains that his Motion for Enforcement of the Superior Court's decision ordering Elections Supervisor Caroline Fawkes to set aside Hansen's nomination papers and remove her name from the Nov. 4 ballot, "was predicate purely on local law."

Judge Lewis full October 1, Order in screenshot form:

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Lewis went on, arguing that the District Court, in its Sept. 24 ruling, answered the federal questions of Hansen's eligibility "in the affirmative" when it granted Hansen the Temporary Restraining order and Permanent Injunction. So "it is in issues of local law, therefore, that Bryan's Emergency Motion must be grounded. And as previously articulated in this Court's Permanent Injunction Opinion, such issues exists," Lewis wrote.

She continued: "Indeed, separate and apart from federal issues regarding Hansen's eligibility to run for, and hold senatorial office, there remains the issue of ballot access -- an issue governed by the Virgin Islands Code."

Lewis later added in her opinion that "the fact that this Court -- interpreted the relevant statutory provisions of the Virgin Islands Elections Code, and the Order of the Supreme Court of the Virgin Islands, differently from Bryan argues they should be interpreted, does not give this Court jurisdiction over Bryan's local claims in the pre-pardon action."

[On September 24](#), Lewis ordered the Board of Elections to keep Sen. Hansen's name on the Nov. 4 ballot by way of permanent injunction. Wednesday's ruling, and the subsequent hearing on Oct. 7, has the potential of rendering Lewis' order as having no effect as it relates to Hansen's name being on the ballot, as the Supreme Court twice ruled that the veteran senator was not eligible to be on it.

The following are the last two paragraphs in Judge Lewis' latest ruling, granting Bryan's Emergency Motion For Remand (sending back) the case to Superior Court:

Senator Hansen and Defendants argument that the District Court has jurisdiction over this matter because Bryan's Superior Court claims implicate Senator Hansen's constitutional rights and the federal preemption doctrine. However these arguments would be raised by the defense to Bryan's claims that the Superior Court should hold Defendant Fawkes in contempt, or should enforce its August 29, 2014 Order. Such federal defenses do not make the action removable. See Caterpillar, 482 U.S. at 393 ("[I]t is now settled law that a case may not be removed to federal court on the basis of federal defense, including the defense of pre-emption, even if the defense is anticipated in the plaintiff's complaint, and even if both parties concede that the federal defense is the only question truly at issue.") (citation omitted); Franchise Tax Bd., 463 U.S. at 10 (Although such allegations show the very likely, in the course of the litigation, a question under the Constitution would arise, they do not show that the suit, that is, the plaintiff's original cause of action, arises under the Constitution.") (quoting Louisville & Nashville R. Co. v. Mottley, 211 U.S. 149, 152 (1908); Bracken v. Matgouranis, 296 F.3d 160, 163-164 (3d Cir. 2002).

In view of the foregoing, Senator Hansen and Defendant have not met their burden of establishing how the local law arguments discussed herein would "arise under federal law," thus conferring jurisdiction on this Court. KIA Motors, 357 F.3d at 397. Accordingly, this Court concludes that it does not have the jurisdiction over Bryan's claims in his "Emergency Motion for Enforcement of Judgement and for Contempt of Sanctions," and, this matter must be remanded to the Superior Court.

For the foregoing reasons, this Court will grant Bryan's Motion for Remand, and will remand this matter to the Superior Court of the Virgin Islands. An appropriate Order

accompanies this Memorandum Opinion.

Judge Lewis' Order:

UPON CONSIDERATION of the "Notice of Removal" filed by Alicia "Chucky" Hansen, (Dkt. No. 1); the "Amended Joinder in Notice of Removal: filed by Defendants Caroline Fawkes, as Supervisor of Elections for the Virgin Islands, and the Virgin Islands Joint Boards of Elections, (Dkt. No. 3); and the Motion for Remand filed by Plaintiff Adelbert Bryan (Dkt No. 6); and for reasons stated in the accompanying Memorandum Opinion, filed contemporaneously herewith, it is hereby

ORDERED that Plaintiff's Motion for Remand is **GRANTED**; and it is further

ORDERED that the Clerk of Court is instructed to **REMAND** the above-captioned matter to the Superior Court of the Virgin Islands.

SO ORDERED.

Correction: *An earlier version of this story stated that the remand hearing will be heard on October 4, however that date was incorrect. The remand hearing will be held on Tuesday, October 7 at the Superior Court of the Virgin Islands.*