

The Virgin Islands Consortium

Supreme Court Rules In Mapp's Favor, Orders Fawkes To Make DS200 Available To Voters For Run-Off Election

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The Supreme Court of the Virgin Islands, in a ruling released Friday, has ordered Supervisor of Elections Caroline Fawkes, and the Board of Elections in both the St. Croix and St. Thomas-St. John districts, to make available DS200 machines for use during the Run-Off Election scheduled for Tuesday, November 18.

The lawsuit was filed on October 30 by gubernatorial candidate Kenneth Mapp, who will be facing off with Donna Christensen in the Run-Off. Virgin Islands voter, Janelle Sarauw was also part of the lawsuit filed against the elections supervisor and the Board of

Elections Chairpeople, including St. Croix District Chairman Adelbert Bryan, St. Thomas-St. John District Chairman Arturo Watlington and Alicia Wells, Chairperson of the Joint Boards of Elections.

On October 27, the Joint Boards of Elections had decided that the DS200 machines were not functioning properly because, according to them, it did not notify voters of an error in the system that would cause voters, who may have marked a particular party symbol but then went on to vote for, say, senatorial candidates who were not members of the party the voter selected when choosing his symbol, to lose all the senatorial candidates in the party the voter selected.

It's a claim that former technology territorial coordinator of the Elections System of the Virgin Islands, Tonjia Coverdale, Ph.D., who resigned her position just days before the 2014 General Election because of conflicts with the Joint Boards of Elections over the use of DS200 voting machines, has refuted [over](#) and [over](#), and said she was saddened that the machines weren't used the way they were supposed to.

Coverdale said if the machines were used the right way, election results would have taken no more than two hours on Tuesday, Nov. 4. It is now well past eight business days and the Board of Elections--St. Croix District--continues to count ballots.

"Once we get them to the computer, it takes less than 30 seconds. So I would say one to two hours [to find out results], and for it now to be seven days, I am just very, very disappointed in that, 2014, where we have the technology that is available to us, to provide us with speed of which we would like our reporting, and also the audit trail that could have been lost; and as a technologist, that really disappoints me," Coverdale told the *VI Consortium*.

In the lawsuit, first filed in the Superior Court of the Virgin Islands on St. Thomas, the plaintiffs sued the Chairs of the Elections Boards, requesting that the Superior Court issue a declaratory relief judgement that the Joint Boards actions were unlawful, and also enjoined Fawkes and the Boards from moving forward with the change.

Because General Elections were to be held on Nov. 4, the Superior Court called an emergency hearing on Nov. 1, 2014, which, according to the Supreme Court, "served as both a hearing on the request for injunctive relief and a trial on the merits."

The Court heard testimony from Dr. Coverdale and St. Croix Board of Elections Chairman Adelbert Bryan, both testifying in favor of using the machines. Bryan had voted against the change in the election procedures during the Oct. 27 Joint Boards meeting. In his testimony in Superior Court, Bryan said the DS200 machines were purchased in 2012, and he hadn't heard of any complaints that the machines were malfunctioning from Board of Elections members. Bryan further testified that in a February 2012 presentation to all members of the Boards of Elections, ES&S representatives showed that the DS200 treated ballots in which straight-ticket and non-party ovals were simultaneously marked as votes for the non-party candidate.

Mapp also testified in support of his own claim, stating that he used the DS200 machine in three separate occasions at demonstration events set up by the Boards of Elections, and that he was aware that feeding his ballot into the DS200 machine would allow him to

correct any overvoting or undervoting error. It's the same scenario explained to *VI Consortium* by Dr. Coverdale in a recent interview.

"We have the capability of voting for one senator, two senators, no senator — you don't have to vote for all seven; that's just our right as voters. However, the way the machines are programmed, if I, voter X, go in and I vote for three senators, the machine is going to think, and it's going to give what might be perceived by an undertrained worker as an error, even though it's just telling me, you undervoted, do you want to continue — that's well within my right. I don't know how their workers were trained, and the fact that [the machines] weren't centralized worries me," Coverdale said.

Final testimony came from St. Thomas Board of Elections Chairman Arturo Watlington, who said that, under the Joint Board's interpretation of Virgin Islands law, an overvote occurs when a voter selects the straight-ticket symbol, but then simultaneously selects other candidates. Watlington argued that a ballot in which a voter filled in the oval to vote for the straight-ticket for the Democratic Party, but also fills in the oval for the Republican candidate for Delegate to Congress, should be viewed as a spoiled ballot because "the individual has in effect voted for two candidates -- the Democratic candidate and the Republican candidate for an office in which he is only entitled to vote for one." Watlington contended that because the DS200 treats such a ballot as a vote for the Republican candidate instead of spoiling the ballot, voters could not place their own ballots into the machine.

In its unanimous opinion, the Supreme Court ordered Fawkes "and each of the elections boards to provide voters in the Nov. 18 run-off election with the option to insert the ballot directly into the DS200" machines.

Christensen also adjoined herself to the case with Mapp and Sarauw, seeking emergency relief.

View the full ruling and opinion [here](#).