

The Virgin Islands Consortium

Haynes Lawsuit Challenging Ottley's Eligibility Heads To Supreme Court

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The long-running lawsuit challenging the eligibility of Basil Ottley, Donna Christensen's running mate, in his bid for the office of Lieutenant Governor in the U.S. Virgin Islands will now head to the Supreme Court of the Virgin Islands. The decision comes after both the District and Superior Courts of the Virgin Islands ruled against Virgin Islands citizen Allen Haynes, Sr., who brought the suit against Ottley.

In October, attorneys representing Haynes filed a motion in the Superior Court to remove Ottley from the Nov. 4 ballot, as well.

Donnie King, one of the two attorneys representing Haynes, told the *VI Consortium* in October that they had filed a preliminary and permanent injunction in the Superior Court seeking the removal of Ottley from the position of lieutenant governor candidate with Christensen on the basis that Ottley did not meet the necessary requirements, as mandated by Section 11 of the Revised Organic Act of the Virgin Islands, which requires that anyone seeking office must be a resident of the Virgin Islands for five years. The District Court of the Virgin Islands had previously dismissed the case with prejudice, meaning it would not be brought before the District Court of the Virgin Islands again.

The Superior Court also followed suit, ruling that Ottley would remain on the Nov. 4 ballot.

In her nine-page ruling, Superior Court Judge Denise M. Francois opined that, "Haynes does not adequately support his contention that this Court has jurisdiction under 28 U.S.C. § 1331, the Revised Organic Act of 1954, or any other jurisdictional grounds raised during oral argument."

Francois went on to say that the Superior Court does not have adequate jurisdiction to deal with a situation that falls under federal law.

"In his Complaint, Haynes asserts that "this Court has jurisdiction pursuant to 28 U.S.C. § 1331 and the Revised Organic Act of 1954 as Amended." However, neither source of law establishes this Court's jurisdiction," Francois opined. "First, section 1331 of Title 28 of the United States Code is a federal statute that expressly vests federal question jurisdiction in district courts; not state courts. Specifically, 28 U.S.C. § 1331 states that, "[t]he district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States." This statute does not apply here. Second, Haynes asserts that jurisdiction for this Court is derived from section II of the Revised Organic Act, which is the underlying statute that Haynes relies upon in seeking preliminary and permanent injunction against Ottley, and the other Defendants. But this, too, does not establish this Court's jurisdiction."

Francois added in her opinion that Haynes lacked private cause of action under Section 11 of the Revised Organic Act of 1954, and drew example with a similar case handled by the Supreme Court of the United States.

"In *Alexander v. Sandoval*, the Supreme Court of the United States established a test that courts must use to determine whether a statute expressly or impliedly creates a private right of action," Francois wrote.

The relevant inquiry involves two steps. First, the text and structure of the statute must be examined to determine whether the legislature intended to create a private right. Second, the text, structure, and legislative history of the statute must be examined to determine whether the legislature intended to create a private remedy. -- U.S. Supreme Court.

Francois added: "An affirmative answer to both inquiries will allow the court to hold that there is an express or implied private right of action that exists under the statute. As the District Court of the Virgin Islands stated in its application of *Sandoval*, "[w]ithout [a showing of statutory intent to create a private right and a private remedy], a cause of

action does not exist and courts may not create one, no matter how desirable that might be as a policy matter, or how compatible with the statute."

In addition, Francois opined that because Haynes failed to file the complaint against Ottley five or less days before Ottley's candidacy was approved by the Supervisor of Elections Caroline Fawkes, in according with 18 V.I.C. § 412, made his complaint of no effect.

The Basil Ottley Back Story

King said in 2008, Ottley had been an employee in the Virgin Islands Legislature, but resigned that year to take up a position at the Department of Interior on the mainland. That job required him to move to Washington, D.C. in order to work. King said Ottley resided in the District of Columbia for two years and filed taxes in Maryland, where he also received a driver's license.

King further pointed out that Ottley would have had to give up his Virgin Islands driver's license in order to receive one issued by the state of Maryland; however, because the Court would not allow Ottley to testify in his defense, it was unknown if indeed the lieutenant gubernatorial candidate gave up his Virgin Islands driver's license.

Ottley has maintained he has never voted anywhere outside the Virgin Islands, no matter how frequent or how long he has been away. However, King says where a person votes is not a requirement of Section 11 of the Revised Organic Act; the issue at hand is that, King contends, Ottley filed taxes in the state of Maryland, which would deem him ineligible to run for political office in the U. S. Virgin Islands in 2014.

Ottley, in a [recent interview](#) with *VI Consortium*, said those who were challenging his eligibility to run for office were "grasping at straws."

"People have said, 'Oh, you were not here' and all of that type of stuff, but what they keep missing is what establishes your bona fide residency in this situation, is where you vote. I think it's title 3 Chapter 13, Section 201 — and I can get the Code wrong, but there's a particular section of the VI Code that speaks to people who are employees of the Virgin Islands, or employees of the federal government who, because of their employment, they were required to leave. The Code says as long as these folks maintain their bona fide residency in the Virgin Islands by not voting in any other place, they are legally accepted as bona fide residents of the Virgin Islands," Ottley said.

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