

The Virgin Islands Consortium

Supreme Court Remands Lawsuit Challenging Ottley's Eligibility Back To Superior Court

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Almost a month following the November 4 General Election and weeks after the November 18 runoff, the Supreme Court of the Virgin Islands Monday in St. Thomas remanded the Allen Haynes, Sr. v. Basil Ottley, Jr. case back to the Superior Court to be heard. Haynes' lawsuit challenged the eligibility of Ottley to run for the No. 2 elected seat in the territory, claiming that the former lieutenant governor candidate was not a bona fide resident of the U.S. Virgin Islands, a requirement by law for running for political office in the territory.

The case had first been [dismissed with prejudice](#) by the District Court of the Virgin Islands, and the Superior Court subsequently ruled that [Ottley would remain on the](#)

[November 4 General Election ballot](#) because, according to the latter court's opinion, plaintiff Haynes, a Virgin Islands resident, did not adequately support his contention that the Superior Court had jurisdiction to hear the case, a move that prompted Haynes' lawyers to bring the challenge before the Supreme Court.

In the order issued Monday, high court justices opined that, contrary to the Superior Court's claim that it does not have jurisdiction over the matter, VI Code Title 4, Section 76 gives the Superior Court the adequate authority to preside over the case.

"The Superior Court's dismissal for lack of subject matter jurisdiction of a complaint challenging the eligibility of the Democratic Party's nominee for lieutenant governor to serve in that position if elected, on various grounds including failure to meet the requirement of bona fide five-year residence in the Virgin Islands, is reversed," the Supreme Court [wrote in its opinion](#).

The court, hoping to set a precedent on cases involving matters of eligibility as it relates to citizenry, said that even if the election is completed, Haynes' appeal remains valid since "the results reported by the Supervisor of Elections are at this stage unofficial, and an exception to the mootness doctrine applies to this case, in that the underlying legal issue is capable of repetition yet evading review."

The justices also opined that "Title 18 of the Virgin Islands Code establishes a comprehensive framework governing elections in the Virgin Islands, containing several provisions regarding challenges to candidacies, including 18 V.I.C. § 411, a statute governing examination of nomination petitions and papers by the Supervisor of Elections calling for disqualification of a candidate who does not meet the qualifications established by law for the office."

Furthermore, the Supreme Court opined that Title 5 of Virgin Islands Code, Section 80, establishes that a regular taxpaying citizen "may maintain an action to restrain illegal or unauthorized acts by a territorial officer or employee or the wrongful disbursement of territorial funds, or the general jurisdiction statute, 4 V.I.C. § 76, which confers jurisdiction over civil actions, including actions for statutory or common law extraordinary writs, including writs of mandamus and quo warranto" -- a legal proceeding during which an individual's right to hold an office or governmental privilege is challenged.

With 5 V.I.C. § 80 and 4 V.I.C. § 76 as its foundation, the Supreme Court added that "the Superior Court had jurisdiction to consider the present suit notwithstanding the fact that the five-day limitations period set forth in § 412 had passed."

The high court did not express an opinion on whether the Plaintiff had "actually pled sufficient facts to succeed on the merits of any of those causes of action, or whether any affirmative defenses are available to the defendants which may defeat those claims."

The Supreme Court reversed the Superior Court's October 30 order on the Haynes challenge for the sole purpose, it says, "of allowing it to consider this complaint on the merits or, if appropriate, dismissing it as moot if the election results are subsequently certified and no legitimate reason exists to proceed into inquiry into the merits of this claim."

The Basil Ottley Back Story

Donnie King, one of the two lawyers representing Haynes, said Ottley was working in the Virgin Islands Legislature in 2008, but resigned that year to take up a position at the Department of Interior on the mainland. That job required Ottley 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 District 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 an interview preceding the November General Election](#), told *VI Consortium* that 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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