

The Virgin Islands Consortium

Rodriguez Files Suit Against Myron Jackson And 32nd Legislature

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Ron De Lugo Federal Building

ST. THOMAS -- One day after Kevin Rodriguez -- the sixth-place winner in the November 8, general election's senatorial race in the St. Thomas-St. John District -- wrote to Senate President of the 32nd Legislature Myron Jackson asking that the Senate, not the courts, decide his fate, and that he be sworn in as a senator, Mr. Rodriguez -- stating that the Senate had failed to act and has indicated that it would await further court action on the matter -- has [filed a suit](#) in the District Court of the Virgin Islands against Mr. Jackson and the 32nd Legislature, seeking declaratory judgement and injunctive relief declaring that

the 32nd Legislature "possess the sole authority and power to determine its membership, declares any injunction entered by the Superior Court dissolved, and orders the 32nd Legislature and its president to seat plaintiff as a member of the Legislature as required by the Revised Organic Act."

The court action follows Mr. Rodriguez's [recent comments stating that he was prepared to fight for his Senate seat](#). He was first challenged in court by eighth-place contender in the November 8 general election Janelle Sarauw on December 9, who alleged that Mr. Rodriguez was not qualified for a seat on the Legislature because he could not satisfy the Revised Organic Act's three-year residency requirement.

The Superior Court had barred Mr. Rodriguez from taking the oath of office, but one week before inauguration, it cleared his path following testimony from witnesses, including Mr. Rodriguez's wife, that the would-be senator had lived in the territory from 2013. But that victory was short-lived, as the Supreme Court, one day before inauguration, overturned the lower court's decision. Citing [judicial estoppel](#), the high court opined that the Superior Court could not take a position contrary to the position it had taken in the past in a legal proceeding.

In the suit, Mr. Rodriguez points to Section 6(g) of the Revised Organic Act, which says in part, "The legislature shall be the sole judge of the elections and qualifications of its members, shall have and exercise all the authority and attributes, inherent in legislative assemblies, and shall have the power to institute and conduct investigations, issue subpoena to witnesses and other parties concerned, and administer oaths."

Calls placed to Mr. Jackson were not returned at time of publishing.

Mr. Rodriguez claimed in a bankruptcy filing in Tennessee to be a resident of the state, with his address listed as 4956 Indian Summer Drive in Nashville, Tenn. The case was dismissed on July 25, 2016, but a section of a form related to the case that asks where one lived for the past three years — the form involved specifically asking whether Mr. Rodriguez had lived anywhere else other than Tennessee for the past 3 years — Mr. Rodriguez answered no.

However, in a November 2016 interview with The Consortium, Supervisor of Elections Caroline Fawkes, relying on Virgin Islands Code, Title 18, said she stood by her decision to certify Mr. Rodriguez, contending that she had vetted the candidate before allowing him on the ballot.

"I don't have any change in my decision; we vetted [Mr. Rodriguez] based on Chapter 4, sub-sections 11 and 12 [of Title 18]. I have been made aware just as you have, and there is a process based on the code, so if you miss the five-day deadline to challenge anyone, then they have to take it legal," Mrs. Fawkes said late November.

That five-day window expired since May, 2016, she said. Mrs. Fawkes said the code does not explicitly say one must live in the territory three years consecutively (the code says three years preceding the election), as compared to persons seeking the governorship, who would have to be in the territory for five consecutive years. She said the reading of the code's meaning is based on one's interpretation, "so that's why an attorney will have to be the one" to decide, "or take it to court," Mrs. Fawkes added.

Again, Mrs. Fawkes said, VI Code Title 18, Chapter 4, sections 11 and 12 were the laws upon which she based her decision to approve Mr. Rodriguez. "Folks tend to confuse domicile and residency," she said, stressing that the case would wind up being a legal matter, and that she would rather refrain from commenting.

It did, with the ultimate outcome being the Supreme Court's decision to bar Mr. Rodriguez from taking the oath of office.

Correction: January 11, 2017

A previous version of this story stated that Kevin Rodriguez came in seventh during the November 8 general election. Mr. Rodriguez placed sixth. The story has been updated to reflect the correct information.