

The Virgin Islands Consortium

Special Election May Be Called In Weeks If Rodriquez Is Not Seated, Democratic Party Warns

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The St. Thomas- St. John District Democratic Party, through its executive committee, has taken the position that the 32nd Legislature has the authority and responsibility to determine the eligibility of Senator-elect Kevin Rodriquez, a press release the Party issued Sunday has made known.

The Party appears to be at odds with its membership in the Senate, as Senate President Myron Jackson, a Democrat, has said that the body would wait until the courts deal with the matter.

"The 32nd Legislature collectively, and me personally, as well as the residents of this territory want to see the issue of Mr. Rodriguez's status resolved with all deliberate speed. We shall continue with the important business of the territory until the matter is resolved and a 15th Senator is seated," said Mr. Jackson [last week](#).

Edgar Phillips, the Party's chairman, recounted the process through Mr. Rodriguez was elected, stating that the would-be senator had won the nomination of the Democratic Party as a candidate, went on to win a Senate seat in the November 8, 2016 general election, and was subsequently challenged by Janelle Sarauw.

"They have taken their claim to the courts to unseat our Democratic senator-elect and our courts, due to non-existence of the 32nd Legislature prior to January 9 2017, have entertained their argument," Mr. Phillips said.

Mr. Phillips added that with every delay of action on the matter of Mr. Rodriguez, time is running out; 30 days with a vacant Senate seat gives the governor of the territory the authority to call a special election, according to Mr. Phillips.

"Times have changed since the opponents' court challenge was filed and we now have a proper forum to judge the eligibility of an elected member of the 32nd Legislature, and that's the Legislature itself according to our Revised Organic Act," Mr. Phillips said.

"Further, every day Senator-elect Rodriguez is not seated, the voters of the St. Thomas-St John District are deprived of equal representation. Similarly, everyday that Rodriguez absence from his seat occurs, brings us closer to the 30-day vacancy provision, which would authorize the governor to call a new election. The Democratic Party therefore calls on our other elected representatives to resolve this matter posthaste, for the clock continues to tick on this issue."

Mr. Phillips added: "The 32nd Legislature is its own judge of its members and their eligibility to sit or not sit. The courts do not have jurisdiction over the internal operations of a co-equal branch of government, and the 32nd must exercise its independence on this matter by taking action one way or the other, although we believe the proper action is to seat Senator-elect Kevin Rodriguez."

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 a suit [filed against Mr. Jackson and the 32nd Legislature last week](#), 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," Mr. Rodriguez pointed 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.”

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.