

The Virgin Islands Consortium

Third Circuit Court Of Appeals Says Only Legislature Can Decide Rodriquez's Fate

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In a major ruling that upends the April 8 special election results called by Governor Kenneth Mapp to fill the 32nd Legislature's 15th seat, the Third Circuit Court of Appeals on Friday handed beleaguered Senator-elect Kevin Rodriguez a major victory in his quest to be seated in the 32nd Legislature, ruling that injunctions by Janelle Sarauw blocking Mr. Rodriguez from taking the oath of office have been dissolved, and that it's now left up to the 32nd Legislature to judge Mr. Rodriguez's qualifications for Senate membership.

"To the extent he is seeking the dissolution of the preliminary injunction enjoining him from taking the oath of office, that injunction was dissolved automatically when the

District Court dismissed the Removed Action," opined the Third Circuit.

The decision also represents a defeating setback for Ms. Sarauw, whose battle to be seated received a major boost after she won the special election; a boost that faded when the St. Thomas District Board of Elections [voted against certifying that election](#).

"The Revised Organic Act, as the Virgin Islands Constitution, and specifically § 6(g), contain a "textually demonstrable constitutional commitment" of power to the Legislature to determine the qualifications of its members," reads the Third Circuit Court opinion, seen below. "This prevents courts from interfering with the Virgin Islands Legislature's determination of the qualifications of its members, including whether they meet the residency requirement of § 6(b)."

The judgement also cites the 1989 case *Mapp v. Lawaetz*, 882 F.2d 49, 54 n.5 (3d Cir.), when the Senate decided to unseat then-Senator Kenneth Mapp. Part of that judgement reads: ("[U]nder the [ROA], the legislature is the 'sole judge' of whether [a member] met [the Act's] eligibility requirements.")

"Thus," the Third Circuit opined, "under the plain language of § 6(g), once the 32nd Legislature convened, it alone had the authority to determine whether Rodriguez possessed the qualifications to be a member and was thereby entitled to take the oath and be seated."

The judgement serves as a rebuke to members of the Senate who were in favor of the Board of Elections seating Ms. Sarauw -- chief among them Myron Jackson, the 32nd body's president -- [who assailed the St. Thomas Board of Elections](#) for not seating the April 8 special election winner. "The Board of Elections needs to do the job it is statutorily mandated to do, which is to certify the special election," Mr. Jackson said late April.

Yet, even as the court's decision favors Mr. Rodriguez, it dismissed his appeal of the Removed Action, and affirmed the District Court of the Virgin Islands' [February order](#) dismissing the federal action, "because it presents a request for court intervention where only the Legislature can act."

The Third Circuit Court of Appeals emphatically added: "With this ruling, the 32nd Legislature should fulfill its statutory obligation to judge Rodriguez's qualifications for membership in the Legislature."

The District Court February judgement that prompted Mr. Mapp to call the special election, had given hope to both the Rodriguez and Sarauw camps; it did not force the Legislature to act on the matter, stating it remains a coequal branch of government.

On the matter of injunctive relief for Mr. Rodriguez, the District Court said in February: "Even if Rodriguez were a member of the 32nd Legislature, his claim to injunctive relief is problematic. Rodriguez asks this Court to command a coordinate, coequal branch of government to undertake a task—seating Rodriguez—that is entirely and exclusively within the 32nd Legislature's control. See, e.g., *Reed v. Cnty. Comm'rs*, 277 U.S. 376, 388 ("[The Senate] is the judge of the elections, returns, and qualifications of its members. It is fully empowered, and may determine such matters without the aid of the House of Representatives or the executive or judicial department." (citation omitted)). In essence, Rodriguez invites this Court to cross a line that separates the coordinate branches. The

Court will decline that invitation."

On the matter of injunctive relief for Ms. Sarauw and Brigitte Berry, the District Court said in February: "Finally, Sarauw and Berry seek an injunction barring Rodriquez from serving as a Senator under 5 V.I.C. § 80. Pursuant to 5 V.I.C. § 80, "[a] taxpayer may maintain an action to restrain illegal or unauthorized acts by a territorial officer or employee." 5 V.I.C. § 80. As the Supreme Court of the Virgin Islands explained, "Virgin Islands courts . . . construe section 80 as meaning what it says, that any taxpayer may sue the Government or one of its officers or employees to prevent a violation of the law." Haynes, 61 V.I. at 567 (emphasis added). Rodriquez is not an officer or employee of the Government of the Virgin Islands. For this reason, Sarauw and Berry cannot obtain injunctive relief through 5 V.I.C. § 80."

Hailing the Third Circuit Court of Appeals decision as a victory, Mr. Rodriquez said, "This isn't a victory for one person. It's a victory for our Virgin Islands democracy."

He added, "The Court of Appeals confirmed what I've been saying all along: Only the Legislature can decide whether I am qualified to be seated. This is exactly what I said in my letter to the Senate President on January 9. Since the injunctions blocking me from taking the oath of office are gone, it is now up to the Legislature to seat me so that I can do the work that I was elected to do."

[Read the original document](#)

Correction: June 10, 2017

A previous version of this story misspelled the last name of the April 8 special election winner. It's Sarauw, not Sauraw.