

The Virgin Islands Consortium

Majority Will Follow Appellate Court's Ruling And Decide Rodriquez's Fate, Senate President Says

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ST. THOMAS -- Senate President Myron Jackson, in a phone interview on Saturday while Mr. Jackson was in transit to Denmark, told The Consortium that the 32nd Legislature will abide by the Third Circuit Court of Appeals Friday ruling and decide whether Senator-elect Kevin Rodriquez should be seated as a member of the body.

Mr. Jackson, whose trip to Denmark as part of Centennial activities was paid out of his own pocket, said the Senate will meet sometime this week for a hearing, and later this month for a session where the Rodriquez/Sarauw matter should finally be settled.

"The 32nd Legislature will be guided by the ruling of the Third Circuit," Mr. Jackson said. "We will do what is required based on the Third Circuit ruling, and move accordingly." Mr. Jackson said while he hadn't gotten a chance as of Saturday to read the entire ruling, it was his understanding that the appellate court's verbiage did not say that the Legislature should immediately seat Mr. Rodriguez, but rather make a decision on whether or not he was eligible. Mr. Jackson made those comments because he said he had been receiving texts and calls asking that the Senate move to swiftly seat Mr. Rodriguez.

"Based on the [ruling], the 32nd Legislature determines the qualifications of Kevin Rodriguez, and if he should be a sitting member of the 32nd Legislature," Mr. Jackson said.

Asked whether the Majority Caucus, made up of all Democrats, was united in its position on the Rodriguez matter, Mr. Jackson said dodged the question. "We weren't even created when the issue came regarding [Kevin Rodriguez]," Mr. Jackson said, adding that the St. Thomas Board of Elections did not call Mr. Rodriguez's name on January 9 during the 32nd Legislature's swearing-in ceremony. Mr. Jackson did not, however, acknowledge that the board could not mention Mr. Rodriguez's name [because the Supreme Court of the Virgin Islands had ruled](#) that the senator-elect should not be sworn-in.

Even so, the Senate president said the Senate will deliberate the matter, looking at Mr. Rodriguez's qualifications and holding a vote later this month during a session, following this week's upcoming hearing. "We will act accordingly, he said."

Mr. Jackson, who was en route to Denmark during the phone interview, said his trip to Europe was planned weeks before Friday's development, and that he would not be back before the upcoming hearing, as he'll return on Saturday.

Mr. Jackson was set to speak today in Denmark on the issue of the [apology by the Moravian Church](#), as well as the issue of reparations to the people of the Virgin Islands. His talk will be followed by meetings with non-governmental organizations regarding some Virgin Islands initiatives, including architecture, arts and culture. And he was scheduled to speak with Denmark's prime minister to followup on the country's promise to [provide scholarships for USVI students](#). Additionally, Mr. Jackson will be the official V.I. government representative for the 100th Centennial celebration set to take place in Denmark, before heading back to the territory on Saturday.

The appellate court's Friday judgement upended the April 8 special election results called by Governor Kenneth Mapp to fill the 32nd Legislature's 15th seat, when it ruled that injunctions by Janelle Sarauw blocking Mr. Rodriguez from taking the oath of office had 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 Rodriquez possessed the qualifications to be a member and was thereby entitled to take the oath and be seated.”

[Read the original document](#)

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. Rodriquez, it dismissed his appeal of the Removed Action, and affirmed the District Court of the Virgin Islands’ [February ruling](#) 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 Rodriquez’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 Rodriquez 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. Rodriquez, the District Court said in February: “Even if Rodriquez were a member of the 32nd Legislature, his claim to injunctive relief is problematic. Rodriquez asks this Court to command a coordinate, coequal branch of government to undertake a task—seating Rodriquez—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, Rodriquez 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.”

Feature Image: The Earl B. Ottley Legislative Building, where the 32nd Legislature will ultimately determine Mr. Rodriquez's fate, and in doing so that of Ms. Sarauw. (Credit: Ernice Gilbert, VIC)