

The Virgin Islands Consortium

District Court Judge Recommends Nelson Case Be Heard In Local Courts; Nelson Says 'Fiasco Is Unfortunate And Unfair'

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ST. CROIX -- Chief District Court Judge Wilma Lewis has ruled that a lawsuit to determine whether Senator Positive Nelson should be allowed to run for the governorship in the 2018 general election, after his candidacy was deemed defective by Supervisor of Elections Caroline Fawkes because of filing issues, should be a matter heard in the territory's local courts. Judge Lewis opined that while the District Court has jurisdiction over the matter, most of the complaints included in the suit against the Board of Elections and Election System of the Virgin Islands, pertain to local law.

The Consortium had asked Mr. Nelson's attorney, Trudy Fenster, why was the suit being filed in the District Court and not the local ones, to which she responded that Mr. Nelson's citizen's rights were violated by the defendants.

"You have first amendment rights, voting rights — you're disenfranchising people who signed the petition and who want to share their ideas and spread their political beliefs, which are in sync with the senator's. They're being disenfranchised," Ms. Fenster said [outside the Election System on St. Croix on June 12](#).

She added, "Then you have the 14th Amendment of the United States Constitution which is being violated because you have to provide due process when you make a decision that is going to disenfranchise voters and prevent the candidates their access to the general election ballot in November. So if, for example, Supervisor Fawkes decided that there was a defect — and we're not saying there was any — 411 C of Title 18 provides that they would have three days to cure. That's a due process right; it is guaranteed by the U.S. Constitution and the Virgin Islands Code. They were deprived of that opportunity."

Mr. Nelson told The Consortium via text message that he wasn't aware of the ruling, and at first chose to refrain from commenting until he could speak with his attorney. In the same message, however, he offered a comment: "This whole fiasco is unfortunate and unfair."

During a press conference late May at Gertrude's Restaurant, the senator said his running mate, Gary Udhwani, was deemed ineligible because of filing problems. Ms. Fawkes contends that Mr. Udhwani's nomination was defective because though he filed on May 8, which was the last day for filing, some of the petitions were dated April 11 — well before Mr. Udhwani's filing, which is a violation of the nomination process.

But the senator said he was not notified of his defective candidacy as local law dictates. According to Virgin Islands Code § 411, Section C, "When a nomination petition, nomination paper or nomination certificate is found to be defective, the candidate shall be notified immediately by special messenger with the reason or reasons therefor. If a new, valid petition, paper or certificate is not filed within three days thereafter, the candidate shall be disqualified for nomination or election."

In her opinion issued with the ruling, Judge Lewis said the local courts have not interpreted multiple sections of local law as they relate to Mr. Nelson's complaints. "Plaintiffs' complaint is replete with alleged violations of local election laws, grounded in statutory provisions, including 18 V.I.C. [Virgin Islands Code] Sections 116, 346, 381, 411 and 412, for which there is a dearth of cases, or none at all, in which the local courts construe the statutory provisions in the specific contexts in which the challenges are presented in the complaint," Judge Lewis wrote.

The Nelson suit calls for a temporary restraining order against Ms. Fawkes and the Board of Elections. See suit documents [here](#) and [here](#).

Mr. Nelson's bid [had apparently ended](#) when the senator announced a day before the deadline to file, that he could not find a running mate. "Friends, family, Virgin Islands territory, I'm not going to tell you that what I'm about to say is easy; it's not. It's not

because I feel like I'm the people's chance for good government. I feel like I'm the most prepared and qualified... And unfortunately at this time, about 3:06 p.m. on Monday, May 7, I don't have somebody that I can tell you is my running mate," he said.

The following day — [on May 8](#) — the senator's countenance at the Elections System's office was uplifted. Mr. Udhwani had joined the team and Mr. Nelson was praising God for the last-minute turn of fortunes. "Sometimes when you get in that tight spot and you lean and God, God shows up. I serve a just-in-time God," he proclaimed.