

The Virgin Islands Consortium

Judge Grants Restraining Order Halting Voter Registration Ahead Of Runoff Election; Arturo Watlington 'Not Above Law'

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Superior Court Judge Denise M. Francois on Wednesday ruled in favor of the Government of the Virgin Islands, which sought a restraining order against Arturo Watlington, chairman of the Board of Elections, blocking Mr. Watlington from conducting voter registration ahead of the runoff election in the St. Thomas-St. John District. The TRO was filed by Attorney General Claude Walker on Tuesday.

Mr. Watlington, despite disagreements from board members and Mr. Walker's opinion issued Friday, which deemed the move unlawful, decided he would proceed with voter

registration beginning Tuesday, and spoke fighting words, stating that only a court order would force him to stop the process.

Judge Francois said in the ruling that the G.V.I. met its burden that the government and the public would suffer irreparable harm if the relief was denied. She said, "The integrity of the elections in the Virgin Islands is paramount to insuring the legitimacy of our elected officials. Of equal import is the public confidence in the election process. She opined that the court finds permitting the Board of Elections to conduct voter registration in violation of law, "will mislead voters and may ultimately lead to disqualification of voters registered in violation of Section 94(a) of Virgin Islands Code."

"These considerations weight in favor of granting the requested injunctive relief," Judge Francois said. Additionally, she opined that the court found no evidence that the Board of Elections would be harmed by granting the G.V.I. the temporary restraining order. "In fact, denial of the motion of a temporary restraining order will have a negative impact on the operations of the Office of the Supervisor of Elections," Judge Francois opined. She said with Supervisor of Elections Caroline Fawkes only having a 14-day window to prepare for the runoff and early voting, adding voter registration would be placing undue burden on the already short-staffed office. Indeed, during a July 12, 2018 Board of Elections meeting, Mrs. Fawkes said, "We're either registering or try to conduct early voting. The last time we tried to do early voting and that's the issue, you can't do both. And we can't do registration and early voting in the same office."

Judge Francois opined that the Virgin Islands Code defines "elections" as "any general or primary election, unless otherwise specified or indicated as in the term 'primaries and elections' where the intention is to refer to primary elections and general elections. The judge added that the Virgin Islands Code does not specifically define a "runoff" election, however, the mandate on when to conduct a runoff election starts with the Revised Organic Act of 1954. Judge Francois added that while the Revised Organic Act does serve as a de facto Constitution for the Virgin Islands, it is simultaneously a federal statute adopted by Congress. Therefore, the judge added, to determine what Congress meant when it included the phrase "runoff election" in Section 11, "the appropriate inquiry is to apply the rules of statutory construction to determine what Congress intended at the time it enacted this provision." Judge Francois opined that there is no specific statute addressing what Congress meant by a runoff election in 1954. However, federal statutes addressing registration and voting do not distinguish between a general election and a runoff election for the purpose of voting. The judge said this is consistent with the basic rules of grammar that "general", "primary" and "runoff" all modify the term election.

"After weighing the foregoing factors, the court finds the likelihood of immediate and irreparable harm to the defendant is, indeed, slight, when compared to the voters' confidence in the integrity and operations of the Election System of the Virgin Islands and the resulting confusion," Judge Francois opined. She also agreed with the government's stance that Board of Elections members are not above the law.

In a quote, Attorney General Claude Walker lauded the judge's decision. "This is a victory for common sense. We are very pleased with the distinguished judge's decision. This is a U.S. jurisdiction, and so we are governed by laws and not by men. It is a beautiful example of American democracy," he said.

The runoff election between Governor Kenneth Mapp and candidate for governor Albert Bryan will take place on November 20.

See document below.

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