

The Virgin Islands Consortium

McClafferty Will Remain Off November Ballot After Judge Dismisses Lawsuit; No Appeal Planned

A federal judge dismissed Matthew McClafferty's lawsuit challenging his removal from the Delegate to Congress ballot. Two local-law claims were dismissed without prejudice, but McClafferty says he will neither refile those claims nor appeal the ruling.

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Brett Matthew McClafferty

Matthew McClafferty will not appear on November's ballot as a candidate for Delegate to Congress after a federal judge dismissed his lawsuit [challenging his disqualification](#). Mr. McClafferty subsequently said he does not intend to appeal the ruling or refile claims that

the court left open for possible future litigation.

United States District Judge Evan Rikhye granted a request by defendants Caroline Fawkes, Supervisor of Elections, and Raymond Williams, chair of the Board of Elections, to dismiss the matter in its entirety. For differing legal reasons, the judge disposed of all five claims brought by Mr. McClafferty, along with his request for a preliminary injunction.

Counts I and II dealt exclusively with Virgin Islands law and, according to Judge Rikhye, presented essentially the same question in different forms: whether Title 18, Section 411 of the Virgin Islands Code authorized the Supervisor of Elections to “reopen a completed petition examination, after cures have been accepted and after the five-day window of §412 has closed, on the basis of citizen complaints, and to disqualify on grounds of petition integrity?”

Although Judge Rikhye discussed the meaning of the language contained in the relevant statute, he ultimately declined to resolve that underlying question.

Citing 28 U.S.C. §1367(c)(1) and guidance from the Third Circuit Court of Appeals, the judge noted that “when a state-law claim involves a novel or unaddressed question of local statutory interpretation, §1367(c)(1) strongly counsels that the federal court should step aside and allow local courts to speak first.”

Counts I and II were therefore dismissed without prejudice, meaning Mr. McClafferty was not barred from attempting to pursue those claims again in an appropriate court.

Count III, meanwhile, was dismissed with prejudice, preventing that claim from being brought again.

In rejecting that portion of Mr. McClafferty’s case, Judge Rikhye found that “a signature requirement and the verification of signatures are procedural conditions of ballot placement. They are not substantive qualifications for office.”

The judge also concluded that the requirements governing the Virgin Islands Delegate to Congress are established by Congress rather than by the Constitution. Mr. McClafferty’s argument that local petition-signature requirements improperly imposed additional constitutional qualifications therefore failed.

Count IV, which alleged violations of the First and Fourteenth amendments, was also dismissed, although without prejudice.

“McClafferty articulates three distinct theories within...his claim. It is the Court’s judgment that all three theories fail as a matter of law,” Judge Rikhye wrote.

The court nevertheless expressed concern about aspects of the process surrounding Mr. McClafferty’s disqualification, pointing to “the lack of transparency in Fawkes’ investigation, as well as in the proceedings of the Virgin Islands Board of Elections highlighted by McClafferty.”

Those concerns were not enough to sustain the constitutional claims.

Ms. Fawkes and Mr. Williams, the court held, “are imbued with specialized local expertise and charged with the daily administration of the statutory framework that governs election administration in the territory.”

Given that specialized expertise and the legal presumption that public officials regularly and properly perform their official duties, the court declined to disturb the election officials’ interpretation of the applicable election laws on the constitutional grounds advanced by Mr. McClafferty.

Mr. McClafferty had voluntarily dismissed his civil RICO allegations. With the remaining claims dismissed, there were no claims left standing in the case, and his request for a preliminary injunction was denied as moot.

After receiving the court’s judgment, Mr. McClafferty issued a statement saying he would not attempt to refile the claims dismissed without prejudice and had no plans to appeal.

“This is the end of the road for us at this time,” he wrote.

“We fought the good fight, and in the process, we got the Attorney General of the Virgin Islands to issue a legal opinion that brings clarity to a very murky area of local law. That same legal opinion establishes a right to due process for all candidates, and if my lawsuit accomplished that — then that’s a victory for the People of the Virgin Islands,” Mr. McClafferty said.

He also wished the remaining candidates well.