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Superior Court Denies Bryan's TRO Request to Block Law Changing Composition of Hospital Boards; Status Conference Set for Thursday

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Governor Albert Bryan By. VI CONSORTIUM

Superior Court Judge Sigrid M. Tejo on Tuesday denied Governor Albert Bryan's temporary restraining order motion, through which the governor sought to block the implementation of a law changing the composition of the V.I. Government Hospital and Health Facilities Corporation, to include the corporation's governing hospital boards for the St. Croix and St. Thomas-St. John Districts.

The judge has set a Feb. 12 date for a status conference on the matter via Zoom, "for the purpose of scheduling an evidentiary hearing on the government's motion for preliminary injunction."

The law in question came through Bill No. 33-0343, which subsequently became Act No. 8438 after 33rd Legislature senators overrode the governor's veto of the measure.

The bill, sponsored by Senators Kurt Vialet and Stedmann Hodge, Jr., and co-sponsored by Senate President Donna Frett-Gregory, is an Act amending V.I. Code to establish "minimum criteria for members of the Virgin Islands Government and Health Facilities Corporation Board, decreasing the number of its members, and increasing the stipend of its board members." In essence, the law requires that individuals with subject matter expertise be placed on the boards, not just random individuals who may not be able to contribute in a meaningful way. The law also reduces to three the number of individuals a governor can appoint to the nine-member district boards, "with the advice and consent of the Legislature." The territorial board, which is comprised of 13 members, includes under the new law three representatives of an administration's cabinet as automatic seats, with the other ten members seeing equal representation from the district boards.

Mr. Vialet, one of the measure's chief sponsors, said the law seeks to strengthen the boards' ability to effectively function by ascertaining that individuals with skillsets in specific sectors are seated.

"This is going to allow the boards to have some subject area expertise on its membership because it clearly clarifies what each person must bring to the table in order to get a vote," Mr. Vialet said. "Before it had anybody, but now we're saying the board will deal with legal issues, so we want an attorney on the board. We know that we're going through the rebuilding phase, we want an architect or engineers and we want subject area expertise, so we want two doctors and two nurses. And then we have somebody from the private sector; we recommended somebody from the Chamber of Commerce who has experience in raising funds because the hospital should also have an entity that's able to generate money."

Mr. Vialet said individuals from each expert area will be chosen from organizations governing those areas. For example, the V.I. Bar would choose the attorney to be placed on the board.

Governor Bryan, however, sought the TRO to stop the law's implementation. Mr. Bryan also seeks "preliminary and permanent injunctions prohibiting, preventing and delaying implementation" of the law. Additionally, the governor wants the court to "declare that Act No. 8348 violates the Revised Organic Act as the Legislature does not have the authority to remove the governor's supervisory authority and/or control over any executive branch governmental body by vesting that authority in anyone other than the governor," according to the complaint, seen [here](#).

In the governor's transmittal letter to the 33rd Legislature following the veto, Mr. Bryan described Bill No. 33-0343 as "invalid and unlawful based on Supreme Court precedent." He added, "The Legislature does not have unlimited power and may not exercise its legislating authority to require appointments to boards or commissions to be subject to its advice and consent." The governor quoted the Revised Organic Act as stating the Legislature "may not exercise the power to appoint, directly or indirectly, for that power is exclusively granted to the executive branch by the Organic Act, and no law contravening that power is valid." The governor's understanding of the Revised Organic Act, it appears, would suggest he believes the Legislature's restructuring of the boards to add subject matter expertise amounts to the Legislature attempting indirectly appoint individuals to the board.

"I object to the Legislature's actions and tactics through these bills to usurp the clear executive branch authority and will take legal action against any violation of the ROA and the Virgin Islands law, if necessary," said the governor in his transmittal letter to then-Senate President Novelle Francis. "To allow this intrusion by the Legislature into the executive branch of Government

would open the door to the gradual erosion of the restraints engendered by the doctrine of Separation of Powers. There would be no logical termination point to the Legislature's power to give advice and consent. This was not the intention of the Framers of the Constitution nor Congress in promulgating the Revised Organic Act."

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