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Judge Orders Law Changing Composition of WAPA Board be Implemented; Senators Call for Immediate Adherence

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Bill 34-0026, which among other things sought to establish a minimum criteria for WAPA's Governing Board while changing the number of its members, was sponsored by former Sen. Janelle Sarauw. By. V.I. LEGISLATURE

The members of the 34th Legislature of the U.S. Virgin Islands have been vindicated, as their attempt to reconstitute the Board of Directors of the territory's troubled Water and Power Authority has been sanctioned by the courts.

On May 4 2021, lawmakers passed [Bill 34-0026](#), which among other things sought to establish a minimum criteria for WAPA's Governing Board while changing the number of its members. The measure also sought to change the number of members of the Governing Board constituting

quorum from five to four.

The legislation was vetoed by Governor Albert Bryan Jr. on May 19, but in August of that year senators unanimously overrode the governor's veto, passing Act 8742 into law. A similar bill by the 33rd Legislature had been vetoed by the governor in October 2020.

Mr. Bryan, having failed to stop the reorganization of WAPA's board with his veto pen, took the matter to court. Lawyers representing both sides — the government and WAPA, the entity against which the action for declaratory judgment and injunctive relief was filed, asked the court to grant the injunction, a situation the court called "unique...where the parties are not adversarial, and both question the validity of the Act and desire the same outcome."

Apart from both WAPA and Government House wanting a permanent injunction on the Legislature's effort to reform the utility's governance structure, Governor Bryan was also asking the court to declare the legislation to be in violation of the territory's Revised Organic Act (ROA).

Presiding Judge Renée Gumbs Carty examined the arguments put forward by counsel for WAPA and the government, and found all of them wanting.

First, the argument that Act 8472 was unconstitutional was not found to be supported. The court points to the separation of powers between the executive, judicial and legislative branches of government, and specifically highlights section 8 c) of the ROA, that the Legislature has the express authority to "amend, alter, modify, or repeal any local law or ordinance...and to enact new laws not inconsistent with any laws of the United States applicable to the Virgin Islands."

WAPA itself is a creature of the Senate, born in 1964 during the reign of the 5th Legislature of the Virgin Islands. Its existence lies in Title 30 VIC Section 105, which delineates the structure and establishes the powers of the authority. Subsequent legislative amendments tweaked the way WAPA operated, including the composition of its Governing Board. The court pointed to Act 2366 of 1968 and Act 4108 of 1978, the latter of which established the board in what was until now its current structure.

Act 8742, the court held, falls within the Legislature's authority to create and amend laws, and "absent a showing that the Legislature has acted improperly or arbitrarily in enacting Act No. 8742, the Court will not interfere with the Legislature's reasoned judgment."

Similarly, Judge Carty dispensed with the government's argument that the law infringed on the governor's ability to execute his duties. "There is no inherent power establishing that there must be three cabinet-level members on the Board, and because that is the way the Board functioned for the last 45 years, it does not mean it should function as such in perpetuity." Losing the previous level of control over appointments to the board, the court ruled, is not a hindrance on the Governor's ability to do the work of "faithful execution of the laws."

The government's contention that the Act would cause irreparable harm was also dismissed by the judge, who found that the plaintiff's arguments in this regard were speculative at best.

As a result, Judge Carty ordered that the temporary restraining order that went into effect on September 20, 2021 be lifted, clearing the way for the immediate implementation of Act 8472.

As news of the judge's March 8 order began to circulate, former and current members of the Legislative branch issued statements of vindication.

“I can’t fathom the lengths the Governor has gone and the use of taxpayer funds to fight this case,” said former Senator Janelle Sauraw, who was the chief sponsor of the bill. “WAPA is a very technical entity and those who sit on the board should be equipped with the skills to make sound decisions. Instead, what we saw was a board filled with political cronies and cabinet members. The law changes that....I’m disappointed that the governor used the judicial system to delay forward progress.”

“We did the right thing in amending the law,” Ms. Sauraw insisted.

Senator Kenneth Gittens, Majority Leader of the 35th Legislature and co-sponsor of the measure, is now urging that WAPA’s Board be reformed immediately, to come into compliance with the law of the land, now that all restraints against Act 8472 have been lifted.

“Senators united for real reform at WAPA by voting for a new board composed of individuals with greater expertise in energy, technology, economics, and finance,” said Mr. Gittens. “The Court has now ordered that WAPA must comply with these changes and that the Legislature acted fully within its authority.” Mr. Gittens called the court’s ruling a victory on behalf of the people of the Virgin Islands.

Mr. Gittens, who has been dogged in calling for increased oversight and scrutiny of WAPA’s affairs, used the opportunity to again call for an in-depth audit of WAPA, and a more thorough investigation into problematic deals that first came to light in [an audit by the VI Inspector General](#) detailing cost overruns of over \$110m on the utility’s propane conversion project.

“I am calling on my colleagues to reconsider this special audit legislation,” Mr. Gittens said. The audit measure proposed by Mr. Gittens was vetoed by Governor Bryan in January.