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Former Senator Steven Payne's Lawsuit Against 34th Legislature and its President Survives Legal Challenge

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Former Senator Steven Payne. By. V.I. LEGISLATURE

The lawsuit against Senator Donna Frett-Gregory and the 34th Legislature filed by former Senator Steven Payne and St. John resident Noelise Powell will continue, after a Superior Court Judge denied the defendants' motion to dismiss.

Following his expulsion from the Senate on July 20 2022 — a culmination of disciplinary proceedings triggered by [accusations of sexual assault](#) by one of Mr. Payne's female staffers in his Senate office — he sued. The senator claims that his former colleagues, specifically Ms. Frett-Gregory, did not follow proper procedure in initiating the investigation into his conduct, and in July 2022 he petitioned the court to reseate him along with other relief including damages.

From July 28 public court records show a trail of legal wrangling between the parties, including arguments over jurisdiction, whether defendants were properly served, and whether the case should be dismissed. On January 7, attorney for the defendants Joseph Arellano filed a motion arguing that the matter was now moot and therefore should be dismissed. Because the 34th Legislature would be dissolved on January 9 and members of the 35th Legislature sworn in that day, Arellano argued that one of the defendants would have ceased to exist when the court heard arguments in the matter on January 10. The second would also not exist – while Frett-Gregory would continue on as a person and as a senator – Arellano claimed that she had been named as a defendant only in her capacity as President of the Senate, a position she would no longer hold in the 35th Legislature. As such, he concluded, the lawsuit should be dismissed.

Ten days later the plaintiffs responded, arguing through their attorney Treston Moore that the case was in fact still a live one, as the issues that needed to be settled would pertain not just to the 34th Legislature but to all subsequent convocations of the Senate. Senators have no statutory authority to expel duly elected colleagues, Moore argued, because while the Constitution of the United States of America gives both houses of Congress the ability to expel legislators, the Revised Organic Act of 1954, which governs life in the Virgin Islands, does not similarly empower the territory's local law making body.

The lawsuit, Moore reiterated, is asking the court to declare that Payne's expulsion was unlawful, order that he receive damages due to the compensation denied to him by that expulsion, and further constrain the Legislature from expelling any member that meets the qualifications for being seated as outlined in Section 6b) of the Revised Organic Act.

Because future iterations of the Legislature have not been explicitly precluded from once again expelling a duly elected member, the plaintiffs argue that the matter is not moot at all.

In late April, Judge Renee Gumbs Carty agreed with Payne and Powell's arguments. "There is a 'great public interest' in having this case resolved in order to guide public officers in the future of the administration of law," the judge wrote. "Payne's expulsion is of public interest because it touches upon issues of democracy, constitutionalism, and magnifies a conflict between a democratically elected, sitting member of the Senate and legislative powers. The issues before the Court further illustrate how the government's exercise of power collides with fundamental voting rights of Virgin Islands citizens and their choice of representatives who would serve their needs as a senator."

Judge Gumbs Carty also held that the question at hand was something the courts could weigh in on in order to provide guidance to future public officers. "Here, the central issue of the instant lawsuit stems from a question of whether the Legislature had the authority to expel a sitting member of the Senate under the Revised Organic Act. What is presented is a "focused, legal issue in sharp controversy" implicating the ROA, juxtaposed to the Legislature being the sole judge of its members also under the ROA, and which the Virgin Islands Supreme Court has not yet ruled on," Carty's memorandum read.

Former senators have been the subject of disciplinary proceedings, and the judge made reference to one such matter which made its way before the court. However in that case, the lawmaker in question – Vargrave Richards of the 25th Legislature – had complained to the courts that the body had violated its internal rules. The question of whether the Legislature has violated the Revised Organic Act in its attempts to discipline and reprimand its members has never been before the courts, and as such the judge found that having the courts consider this matter would be a beneficial move, since a failure to adjudicate the matter now could lead to similar questions

arising in the future.

For these and other exceptions, Judge Carty denied the motion to dismiss due to mootness. However, that does not yet clear the way to trial, as other previously filed dismissal motions are still pending. Consortium journalists understand that two such motions, one from each plaintiff, are still awaiting the court's attention.

Following the news of last year's investigation into Payne's conduct with his Senate staffer, one woman repeated [earlier allegations](#) of sexual assault by Payne when he was employed as a police officer and stationed in an elementary school, while [another woman](#) came forward with allegations that the former senator had sexually assaulted her while she was a minor. Payne has declined to speak with Consortium journalists about the allegations on several occasions, however he has continued to deny the accusations and previously expressed the belief that they arose out of [political malice](#).

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