

## No Right to Cast a Paper Ballot

*Bryan v. Abramson (Harvey Bartle, D.V.I. 1:10-cv-79)*

A former Virgin Islands senator filed a pro se federal complaint in the District of the Virgin Islands on August 17, 2010, claiming that there was no legal authority for a plan to require voters who elected not to cast votes electronically to vote using provisional ballots.<sup>1</sup> Among the relief sought in the complaint was a temporary restraining order and a preliminary injunction.<sup>2</sup>

Chief Judge Curtis V. Gómez issued an order on August 24 setting an August 26 hearing before Judge Harvey Bartle and ordering notice to Virgin Islands election officials.<sup>3</sup>

At a hearing held on this matter, plaintiff contended that the electronic voting machines have a record of failing to record votes accurately and that provisional ballots are not counted at the polling sites but are sent to a central location where they are tabulated under the aegis of the Joint Board of Elections. He objects to this counting procedure because, in his view, the Joint Board is rife with conflicts of interest as a number of the board members are employees of the government or its elected officials.<sup>4</sup>

Judge Bartle dismissed the complaint for lack of federal jurisdiction on August 31.<sup>5</sup> Although the plaintiff cited the Help America Vote Act (HAVA)<sup>6</sup> in his complaint, and the act does provide for provisional ballots, the plaintiff did not allege how the Virgin Islands plan violated federal law.<sup>7</sup>

On October 10, the Virgin Islands' superior court also denied the plaintiff relief sought in a complaint also filed on August 17.<sup>8</sup>

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1. Complaint, *Bryan v. Abramson*, No. 1:10-cv-79 (D.V.I. Aug. 17, 2010), D.E. 1; see Bill Kossler, *Elections Board Hoping to Bolster Faith in Voting Machines*, St. Croix Source, Sept. 27, 2010.

2. Complaint, *supra* note 1, at 5; Scheduling Order, *Bryan*, No. 1:10-cv-79 (D.V.I. Aug. 24, 2010), D.E. 8.

3. Scheduling Order, *supra* note 2.

4. Opinion, *Bryan*, No. 1:10-cv-79 (D.V.I. Aug. 31, 2010), D.E. 17.

5. *Id.* at 11.

6. Pub. L. No. 107-252, 116 Stat. 1666 (2002), *as amended*, 52 U.S.C. §§ 20901–21145 (2014). See generally Marie Leary & Robert Timothy Reagan, *The Help America Vote Act* (Federal Judicial Center 2012); Symposium, *HAVA @ 10*, 12 Election L.J. 111 (2013).

7. Opinion, *supra* note 4.

8. Opinion, *Bryan v. Abramson*, No. SX-10-CV-0000363 (V.I. Super. Ct. Oct 10, 2010), 2010 WL 7746073.