

No Right to Cast a Paper Ballot

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

A pro se complaint sought a right to cast a paper ballot instead of voting electronically or casting a provisional ballot. The court determined that the complaint did not present a federal question. A local court determined that the claim was without merit.

Subject: Voting procedures. *Topics:* Matters for state courts; provisional ballots; voting technology; pro se party; Help America Vote Act (HAVA).

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.¹ Among the relief sought in the complaint were a temporary restraining order and a preliminary injunction.²

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

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.⁴

Judge Bartle dismissed the complaint for lack of federal jurisdiction on August 31.⁵ Although the plaintiff cited the Help America Vote Act⁶ in his complaint, and the act does provide for provisional ballots, the plaintiff did not allege how the Virgin Islands plan violated federal law.⁷

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.

Judge Gómez was replaced by Judge Robert Molloy in 2020. See Judicial Milestones, www.uscourts.gov/judicial-milestones/robert-molloy; Suzanne Carlson, *AG: 17-Year-Old VLT Contract Was Never Legal*, V.I. Daily News, May 12, 2020; Suzanne Carlson, *Judge Robert Molloy Confirmed to District Court*, V.I. Daily News, Feb. 26, 2020.

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

5. *Id.* at 11.

6. Pub. L. No. 107-252, 116 Stat. 1666 (2002), as amended, 52 U.S.C. §§ 20901–21145. 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. D.V.I. Opinion, *supra* note 4.

On October 10, the Virgin Islands' superior court also denied the plaintiff relief sought in a complaint also filed on August 17.⁸

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