

Ineligibility to Serve in the Legislature Because of Moral Turpitude

Payne v. Fawkes (1:14-cv-53), Hansen v. Fawkes (1:14-cv-55), Bryan v. Fawkes (1:14-cv-66) and O'Reilly v. Board of Elections (1:14-cv-107) (Wilma A. Lewis, D.V.I.)

Following a pardon, a federal complaint sought to restore a legislature candidate to the ballot after her removal for moral turpitude because of a misdemeanor tax conviction. The federal court restored the candidate to the ballot, but the Virgin Islands' supreme court ruled against the federal court on matters of Virgin Islands law. The federal court remanded two subsequent related lawsuits removed from the Virgin Islands' superior court.

Subject: Getting on the ballot. *Topics:* Getting on the ballot; matters for state courts; removal; write-in candidate; recounts.

Five voters filed a federal complaint in the District of the Virgin Islands on September 7, 2014, challenging the disqualification for criminal conviction of an incumbent Virgin Islands senator's candidacy for reelection.¹ On September 8, Judge Wilma A. Lewis scheduled a hearing for September 10 on the plaintiffs' request for a temporary restraining order.² Also on September 8, the senator filed her own federal complaint.³ Judge Lewis set the second case for hearing at the same time as the first case.⁴ At the hearing, Judge Lewis decided to consolidate the cases.⁵

The senator was convicted in federal court on December 10, 2008, of misdemeanor failure to file tax returns for 2002 through 2004.⁶ She was reelected in 2010 and 2012.⁷ On May 19, 2014, the chair of St. Croix's board of elections challenged the senator's eligibility to serve as a violation of federal proscriptions on Virgin Islands' legislators who have been convicted of crimes involving moral turpitude.⁸ A superior-court judge ruled that the senator's crimes did not involve moral turpitude, but the Virgin Islands' su-

1. Complaint, *Payne v. Fawkes*, No. 1:14-cv-53 (D.V.I. Sept. 7, 2014), D.E. 1.

2. Order, *id.* (Sept. 8, 2014), D.E. 7.

3. Complaint, *Hansen v. Fawkes*, No. 1:14-cv-55 (D.V.I. Sept. 8, 2014), D.E. 1.

4. Order, *id.* (Sept. 8, 2014), D.E. 2.

5. Transcript at 5, *Payne*, No. 1:14-cv-53 (D.V.I. Sept. 10, 2014, filed Dec. 15, 2014), D.E. 41; Order, *id.* (Sept. 11, 2014), D.E. 18.

6. Jury Verdict, *People v. Hansen*, No. 3:07-cr-23 (D.V.I. Dec. 10, 2008), D.E. 170; *see* Judgment, *id.* (June 10, 2009), D.E. 202 (imposing three consecutive suspended sentences of one year each, plus probation).

7. Opinion at 3, *Bryan v. Fawkes*, No. 2014-46 (V.I. Aug. 28, 2014) [hereinafter Aug. 28, 2014, V.I. *Bryan* Opinion], 2014 WL 4244046.

8. Petition, *Bryan v. Fawkes*, No. 2014-cv-144 (V.I. Super. Ct. May 19, 2014), *included as* Ex. 1, Stay Motion, *Payne*, No. 1:14-cv-53 (D.V.I. Oct. 1, 2014), D.E. 30; V.I. Aug. 28, 2014, *Bryan* Opinion, *supra* note 7; *see* 48 U.S.C. § 1572(b) (2015).

preme court, on August 28, 2014, determined that they did.⁹ On September 3, the senator was pardoned by the Virgin Islands' governor.¹⁰

On September 12, 2014, Judge Lewis issued a temporary restraining order, to remain in effect until September 26, ordering the inclusion of the senator on the November 4 ballot.¹¹ Judge Lewis concluded that the pardon restored the senator's eligibility to run for her office.¹² On September 24, Judge Lewis converted her temporary restraining order to a permanent injunction.¹³

On October 1, Judge Lewis remanded an action removed by the senator to federal court that was filed in the superior court by the elections-board chair seeking to enforce the striking of the senator from the ballot through a contempt sanction.¹⁴ On October 6, Judge Lewis declined to issue an order on the plaintiffs' behalf directly interfering in superior-court proceedings.¹⁵

On October 24, the Virgin Islands' supreme court ordered the senator stricken from the ballot,¹⁶ scolding Judge Lewis: "Despite being expressly informed . . . that the same issues were being considered by this Court as part of the same proceeding that had resulted in issuance of the August 28, 2014 opinion, the District Court issued a temporary restraining order"¹⁷

[W]e conclude that the District Court lacked subject matter jurisdiction to interfere with an *in rem* proceeding that remained actively litigated in the Virgin Islands court system, and that even if it possessed *in personam* jurisdiction, conflicts between Virgin Islands courts and the District Court on issues of Virgin Islands law must necessarily be resolved in favor of the local courts.¹⁸

9. Aug. 28, 2014, V.I. *Bryan* Opinion, *supra* note 7; see Bill Kossler, *Supreme Court Orders Hansen Removed from Ballot*, St. Croix Source, Aug. 29, 2014.

10. Opinion at 2, 5, *Payne*, No. 1:14-cv-53 (D.V.I. Sept. 12, 2014), D.E. 21 [hereinafter Sept. 12, 2014, D.V.I. *Payne* Opinion], 2014 WL 4499559; see John Baur, *Governor's Pardon of Hansen Opens Path to Ballot*, St. Croix Source, Sept. 3, 2014.

11. Temporary Restraining Order, *Payne*, No. 1:14-cv-53 (D.V.I. Sept. 12, 2014), D.E. 20; see Bill Kossler, *Breaking: Court Orders Hansen Back on Ballot*, St. Croix Source, Sept. 11, 2014.

12. Sept. 12, 2014, D.V.I. *Payne* Opinion, *supra* note 10.

13. Opinion, *Payne*, No. 1:14-cv-53 (D.V.I. Sept. 24, 2014), D.E. 27, 2014 WL 4747320; Order, *id.* (Sept. 24, 2014), D.E. 26; see Susan Ellis, *Lewis Order Keeps Hansen on Ballot*, St. Croix Source, Sept. 25, 2014.

14. Opinion, *Bryan v. Fawkes*, No. 1:14-cv-66 (D.V.I. Oct. 1, 2014), D.E. 8; Order, *id.* (Oct. 1, 2014), D.E. 7; see Notice of Removal, *id.* (Sept. 23, 2014), D.E. 1; see also Bill Kossler, *Hansen's Ballot Placement Still Open Question*, St. Croix Source, Oct. 2, 2014.

15. Opinion, *Payne*, No. 1:14-cv-53 (D.V.I. Oct. 6, 2014), D.E. 34, 2014 WL 4979449; Order, *id.* (Oct. 6, 2014), D.E. 33.

16. Opinion, *Bryan v. Fawkes*, No. 2014-66 (V.I. Oct. 24, 2014) [hereinafter Oct. 24, 2014, V.I. *Bryan* Opinion], 2014 WL 5409110; see Bill Kossler, *V.I. Supreme Court Orders Chucky Off the Ballot*, St. Croix Source, Oct. 24, 2014; see also *Fawkes Suspends Early Voting on St. Croix*, St. Croix Source, Oct. 26, 2014 (reporting that some early voting was suspended in the Virgin Islands as a result of the supreme court's ruling).

17. Oct. 24, 2014, V.I. *Bryan* Opinion, *supra* note 16, at 4.

18. *Id.* at 15.

The Virgin Islands' supreme court noted further that the U.S. District Court for the District of the Virgin Islands is not an article III court: "the Supremacy Clause is wholly irrelevant to this case because all courts involved are Article IV courts."¹⁹

In an October 31 order and a November 3 opinion, Judge Lewis clarified that her decision that the governor's pardon cured the federal-law impediment to the senator's serving in the legislature, but the Virgin Islands' supreme court remained the superior authority on whether the senator was able under Virgin Islands law to cure her ballot-application papers between the time of the pardon and the time of the election.²⁰

The senator's name was not included on the election-day ballot.²¹ Running as a write-in candidate, she did not receive enough votes for reelection as one of seven senators from St. Croix.²² On December 8, the candidate who came in seventh filed a complaint in the superior court challenging the write-in candidate's seeking a recount, and the write-in candidate removed the action to federal court on December 15.²³ On December 23, Judge Lewis remanded the action back to superior court, pursuant to *Railroad Commission v. Pullman Co.*,²⁴ because of the many unsettled local law questions concerning recounts requested by a write-in candidate.²⁵

19. *Id.* at 16–17.

20. Opinion, *Payne*, No. 1:14-cv-53 (D.V.I. Nov. 3, 2014), D.E. 40, 2014 WL 5548505; Order, *id.* (Oct. 31, 2014), D.E. 39.

21. *See Ballots for Tuesday's Election Released*, St. Croix Source, Nov. 2, 2014.

22. *See* Official Territory Wide Report, www.vivote.gov/sites/default/files/officialresults/Territory%20wide.HTM, archived at web.archive.org/web/20210508065647/www.vivote.gov/sites/default/files/officialresults/Territory%20wide.HTM; Complaint, *O'Reilly v. Bd. of Elections*, No. SX-2014-cv-461 (V.I. Super. Ct. Dec. 8, 2014), attached to Notice of Removal, *O'Reilly v. Bd. of Elections*, No. 1:14-cv-107 (D.V.I. Dec. 15, 2014), D.E. 1 [hereinafter *O'Reilly* Notice of Removal].

23. *O'Reilly* Notice of Removal, *supra* note 22; *see* Susan Ellis, *St. Croix Elections Board Agrees to Recount*, St. Croix Source, Nov. 26, 2014.

24. 312 U.S. 496 (1941) (holding that if resolution of an uncertain state-law matter might moot a federal constitutional question, "In the absence of any showing that . . . methods for securing a definitive ruling in the state courts cannot be pursued with full protection of the constitutional claim, the district court should exercise its wise discretion by staying its hands.").

25. Opinion, *O'Reilly*, No. 1:14-cv-107 (D.V.I. Dec. 23, 2014), D.E. 4; Order, *id.* (Dec. 23, 2014), D.E. 3.