

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

ADELBERT M. BRYAN,	)	
	)	
Petitioner,	)	
	)	
v.	)	
	)	
CAROLINE FAWKES, in her Official	)	
Capacity as Supervisory of Elections,	)	Case No. SX-14-CV-144
	)	
Respondent,	)	
	)	
ALICIA "CHUCKY" HANSEN,	)	
	)	
Intervening Respondent.	)	

MEMORANDUM OPINION and ORDER DENYING MOTIONS FOR CONTEMPT

Before the Court are Petitioner's September 18, 2014 Emergency Motion for Enforcement of Judgment and for Contempt Sanctions (September 18 Motion); and Petitioner's October 29, 2014 Emergency Motion for Criminal Contempt, for Contempt Sanctions, and for an Order Directed to Respondents Caroline F. Fawkes and Certain Members of the V.I. Joint Boards [sic] of Elections to Show Cause Why They Should Not Be Held in Criminal Contempt for their Failure to Comply with the Supreme Court of the Virgin Islands' Order Dated October 24, 2014¹ (October 29 Motion).² Both Motions are fully briefed and came on for hearing on February 8, 2017, wherein Petitioner appeared *pro se*; Respondent Fawkes appeared personally and was represented by Assistant Attorneys General Erika M. Scott, Esq. and Tana McPherson, Esq.; and Intervening Respondent Hansen was represented by Rhea Lawrence, Esq. For the reasons that follow, both Motions will be denied.

Background

Because the extensive history of this litigation has been fully set forth previously, only that background relevant to the instant Motions is reviewed here. This matter was remanded to this Court

¹ The Petition names Caroline F. Fawkes "in her Official Capacity as Supervisor of Elections for the U.S. Virgin Islands" as the sole Respondent. Yet, the caption to the October 29 Motion includes "V.I. Joint Boards [sic] of Elections" as Respondent, even though that entity was not named in the Petition, and no summons was ever issued to that entity which has never been a named party to this action. The October 29 Motion seeks criminal contempt sanctions against Fawkes and various "members of the V.I. Joint Board of Elections."

² The October 29 Motion was filed in the Supreme Court of the Virgin Islands (S. Ct. Civ. No. 2014-0066), and referred to this Court by Order issued October 30, 2014. The Superior Court conducted a hearing on the October 29 Motion on October 31, 2014, limited in scope in light of the pending election to issues relative to enforcement of the Supreme Court's October 24 Order. By Order entered October 31, 2014, the Superior Court deferred hearing and consideration of issues relative to the contempt sanctions sought by the October 29 Motion.

by August 28, 2014 Order of the Supreme Court. By Order entered August 29, 2014, the Superior Court granted Bryan's Petition, and ordered Fawkes to set aside the nomination papers of Hansen, and to remove Hansen's name from the general election ballot.

By letter addressed to Hansen, dated September 2, 2014, Fawkes advised Hansen that "your Nomination Paper seeking a Senatorial Seat in the 31st Legislature has been disqualified." On September 3, 2014, Governor John P. de Jongh, Jr. pardoned Hansen, stating, *inter alia*, that he "do[es] hereby pardon the convictions of Alicia 'Chucky' Hansen for the crimes of willful failure to file income tax returns under V.I. Code Ann. tit. 33, § 1524 and restore her civil rights in all respects."³ On September 4, 2014, Hansen filed new nomination papers, but Fawkes never accepted the September 4, 2014 nomination papers and "advised Hansen that she was not going to put her name back on the general election ballot unless she receive[d] a new court order." September 18 Motion, at 10-11.

On September 7, 2014, five Virgin Islands voters sued Fawkes, "in her Individual Capacity, and in her Capacity as Supervisor of Elections for the U.S.V.I.," and the Virgin Islands Joint Board of Elections in the District Court of the Virgin Islands, seeking a temporary restraining order, preliminary injunction, permanent injunction, and declaratory relief to the effect that the Governor's pardon had removed the impediment to Hansen serving in the 31st Legislature, and that her name should be restored to the general election ballot.⁴ The next day, Hansen filed a similar action, also in the District Court, seeking the same relief.⁵ The District Court consolidated the cases, and the motions for TRO came on for hearing on September 10, 2014. At that hearing, "the Virgin Islands Attorney

³ The pardon was preceded by Memorandum, dated September 3, 2014, to Governor de Jongh from Attorney General Vincent F. Frazier, Esq. "to address your authority, as Governor, to grant a pardon for Senator Alicia 'Chucky' Hansen, as a means to remove her disqualification and enable her to be a candidate for the Senate in the 2014 general elections, in light of the Supreme Court of the Virgin Islands' recent opinion and order to have her candidacy set aside because she was convicted of a crime of moral turpitude." The Memorandum concluded, in pertinent part, that "it is our opinion that Senator Hansen can be pardoned of her past conviction for the local crime(s) of failure to file taxes and have restored to her all her civil rights so that she may be placed on the general election ballot for 2014... Once granted a pardon, we opine that Senator Hansen may cure the defect in her nomination paper if resubmitted to the Supervisor within three (3) days of the Notice of Defect under Title 18 V.I.C. Sec. 411(c)... there is good reason to conclude that Senator Hansen is eligible to be placed on the ballot once she has been granted a pardon with restoration of her civil rights."

⁴ Civil Action No. 2014-053: Paul Payne, Glendaly Felix, Tyrone Hendrickson, Anneth Evelyn, and Nancy Paulina v. Caroline Fawkes, in her individual capacity, and in her capacity as Supervisor of Elections of the U.S.V.I., and the Joint V.I. Board of Elections

⁵ Civil Action No. 2014-055: Senator Alicia "Chucky" Hansen v. Caroline Fawkes, in her individual capacity, and in her capacity as Supervisor of Elections of the U.S.V.I., and the Joint V.I. Board of Elections.

General, through his Assistant Attorney General Carol Thomas-Jacobs, acting as the legal representative for the Defendants, agreed with the Plaintiffs and argued all points identically to what the Plaintiff's had argued." *Id.* at 4. On September 12, 2014, the District Court granted the TRO and "ORDERED that Defendants are directed to place Senator Alicia 'Chucky' Hansen's name on the ballot for the upcoming November 4, 2014 general election." While the District Court action was pending, on September 11, 2014, through the office of the Attorney General, Fawkes filed a Petition for Rehearing with the Supreme Court relative to its August 28, 2014 Order, in part on the basis that "this Court's opinion and mandate in this case was premature since it did not provide time for the defect in the nomination papers to be cured before the election." The Supreme Court denied the Petition for Rehearing on September 12, 2014, after the issuance of the TRO by the District Court, noting that neither Fawkes nor Hansen, in the trial court or on appeal, had sought an extension of time within which Hansen could seek to cure the defect in her nomination papers. The District Court converted the TRO into a permanent injunction by Order filed October 24, 2014.

Fawkes, "faced with two contradictory orders... chose to comply with the District Court order, and on September 15, 2014, the St. Croix District Board of Elections, by a divided 4-2 vote, approved Fawkes's addition of Hansen to the ballot." *Bryan v. Fawkes*, 61 V.I. 416, 432 (V.I. 2014). Bryan's September 18 Motion was filed thereafter, correctly noting that "[t]he issue herein is whether Fawkes 'willfully' violated this Court's [August 29, 2014] order... by placing Hansen back on the ballot." September 18 Motion, at 7. The September 18 Motion seeks an order finding Fawkes in criminal contempt because "[i]t appears from the indisputable facts of this case that there was some collusion between [Fawkes and Hansen] to willfully violate this Court's order and to hide behind a favorable District Court order." *Id.* at 9. The September 18 Motion states that "Fawkes does nothing to defend herself in the District Court action and proffers identical arguments given by Hansen.... It is clear that the desired outcome of the Respondent's participation in the District Court case was to settle the rights of Hansen to be placed on the 2014 General Election Ballot... Fawkes knew what she was supposed to do by the Court's orders and yet participated in the callusion [sic] to violate this Court's order." *Id.* at 11 (emphasis in original). The September 18 Motion suggests that these facts are "indicative of collusion" and that "the failure by Fawkes to assert any defense in the District Court proceedings is tantamount to willfulness, and thus is subject to contempt." *Id.* at 12.

After removal to the District Court, and remand, this Court held a hearing on the September 18 Motion on October 7, 2014. By Order entered October 10, 2014, this Court denied the September 18 Motion. On expedited appeal (S. Ct. Civ. No. 2014-0066), by Order filed October 24, 2014, the Supreme Court vacated and remanded to the Superior Court that portion of the October 10, 2014 Order denying Bryan's motion for sanctions, to address Bryan's claim on the merits, including issuing findings of fact and conclusions of law with respect to his collusion claim.

Bryan filed the October 29 Motion in the Supreme Court, seeking an order of criminal contempt against Fawkes "for willfully violating the Supreme Court of the Virgin Islands' Order dated October 24, 2014," requiring her to immediately comply with the August 28, 2014 and August 29, 2014 orders of the Supreme Court and Superior Court, respectively, and to remove Hansen's name from the November 4, 2014 general election ballot. By order filed October 30, 2014, the Supreme Court referred the October 29 Motion to the Superior Court, which conducted a hearing on October 31, 2014 and issued its Order the same day enforcing the Supreme Court's October 24 Order. In light of the urgency of the pending election, the Court limited the scope of that hearing and its Order to issues relative to enforcement, deferring to a later date issues relative to the imposition contempt sanctions sought by the October 29 Motion.

Legal Standard

Title 15 V.I.C. § 581 provides:

Every court of the Virgin Islands shall have power to punish by fine or imprisonment, at its discretion, such contempt of its authority, and none other as—

- (1) misbehavior of any person in its presence or so near thereto as to obstruct the administration of justice;
- (2) misbehavior of any of its officers in their official transactions; or
- (3) disobedience or resistance to its lawful writ, process, order, rule, decree, or command.

The Supreme Court of the Virgin Islands has further clarified criminal contempt standards:

[T]o be held in criminal contempt for violating a court order, it must be established, beyond a reasonable doubt, that the contemnor willfully disobeyed the order. To prove willfulness, the contemnor must know or should reasonably be aware that his conduct is wrongful. Criminal contempt of court that obstructs the administration of justice has generally been defined as any willful misconduct which embarrasses, hinders, or obstructs a court in its administration of justice or derogates the court's authority or dignity, thereby bringing the administration of law into disrepute. Obstruction of the administration of justice should not be confused with obstruction of justice. Justice

may be obstructed by mere inaction, but obstruction of the administration of justice requires something more — some act that will interrupt the orderly process of the administration of justice, or thwart the judicial process. Because criminal contempt is one of the most severe sanctions a court may impose, the effect on the proceedings must be serious, rather than merely a momentary disruption.

People of the V.I. in re M.R., 64 V.I. 333 (V.I. 2016) (internal citations and quotations omitted).

Conversely, the standard of proof for civil contempt is clear and convincing and the “remedy for civil contempt includes compensation for plaintiff’s actual loss or a defendant’s actual profit resulting from the disobedience.” *Virgin Islands Taxi Association v. Virgin Islands Port Authority*, 2016 V.I. LEXIS 69, *27 (V.I. Super. Ct. 2016) (citations omitted). Further, the Supreme Court of the Virgin Islands has explained:

A party may be held in civil contempt for failure to comply with a court order if (1) the order the contemnor failed to comply with is clear and unambiguous, (2) the proof of noncompliance is clear and convincing, and (3) the contemnor has not diligently attempted to comply in a reasonable manner. It need not be established that the violation was willful.

In re Burke, 50 V.I. 346, 352 (V.I. 2008).

Findings of Fact

At the February 8, 2017 hearing, Bryan called two witnesses— Patricia Frorup⁶ and Evelyn Bascombe,⁷ and testified himself. Defendant Fawkes also testified. Both parties presented documentary exhibits that were admitted into the record.⁸

⁶ Frorup has worked as an elections official for the past 50 years, and was so engaged in connection with the 2014 general election when the Supreme Court ruled that Hansen was ineligible and was to be removed from the general election ballot.

⁷ Bascombe has regularly attended meetings of the St. Croix District Board of Elections, and did so during the period prior to the 2014 general election, although she was off-island on election day and voted by absentee ballot.

⁸ Bryan presented exhibits admitted into evidence, as follows:

1. October 28, 2014 (5:15 PM) email from Assistant Attorney General Kimberly L. Salisbury, Esq. directing Fawkes and the St. Croix Board of Elections that the Order of the Supreme Court removing Hansen from the ballot “needs to be complied with. The AG has advised Ms. Fawkes she needs to comply with the Court order and get new ballots. The STX Board should also comply with the Order and approve the new ballot as required by 18 V.I.C. § 4(b)(5).”
2. November 17, 2014 [sic] letter from Bryan, as Chair of the St. Croix Board, to Fawkes to “officially notify you as Supervisor of Elections and employee of the Board of Elections of a very serious violation of some Official Election documents on display and unauthorized distribution of official November 18, 2014[sic] Election Ballots at the Training and Information Session.”
3. November 3, 2014 letter from Hansen’s attorney, Lee J. Rohn, Esq. to Fawkes that Hansen “has been forced to launch a write in campaign... [and] gives the Election Board notice of her various aliases...”
4. General Election Official Ballot “SAMPLE” listing Alicia “Chucky” Hansen as candidate for the Legislature.
5. October 27, 2014 Motion Roll Call Sheet, Meeting of Joint Boards [sic] of Elections.

September 18 Motion

From the evidence presented at the hearing or otherwise appearing in the record relevant to the September 18 Motion, the Court makes findings of fact, as follows:

1. Fawkes was Virgin Islands Supervisor of Elections at the time of the 2014 election, responsible for day-to-day management and operations, preparation and review of nomination packages, management of voter registration, preparation for primary and general elections, and presentation of information to the Boards of Elections.
2. Following the August 28, 2014 and August 29, 2014 orders of the Supreme Court and Superior Court, respectively, Fawkes advised Hansen by letter, dated September 2, 2014, that “your Nomination Paper seeking a Senatorial Seat in the 31st Legislature has been disqualified.”
3. By Memorandum, dated September 3, 2014, Attorney General Vincent F. Frazier, Esq. advised Governor de Jongh, “that Senator Hansen can be pardoned of her past conviction for the local crime(s) of failure to file taxes and have restored to her all her civil rights so that she may be placed on the general election ballot for 2014... Once granted a pardon, we opine that Senator Hansen may cure the defect in her nomination paper if resubmitted to the Supervisor within three (3) days of the Notice of Defect under Title 18 V.I.C. Sec. 411(c)... there is good reason to conclude that Senator Hansen is eligible to be placed on the ballot once she has been granted a pardon with restoration of her civil rights.”
4. On September 3, 2014, Governor de Jongh, Jr. pardoned Hansen, stating, *inter alia*, that the pardon “restore[s] her civil rights in all respects.”
5. On September 4, 2014, Hansen filed new nomination papers that Fawkes rejected, stating that she would not return Hansen’s name to the ballot unless she received a new court order.
6. On September 7 and 8, 2014, certain Virgin Islands voters and Hansen filed separate actions in the District Court, later consolidated, seeking injunctive and declaratory relief, to the effect that Hansen’s pardon had removed the impediment to her serving in the 31st Legislature, and that she should be restored to the general election ballot.
7. Bryan attended the September 10, 2014 hearing of the consolidated District Court cases, where AAG Thomas-Jacobs, on behalf of Fawkes, conceded the lack of any case or controversy, and Fawkes and Hansen made identical arguments before the District Court.
8. On September 11, 2014, Fawkes filed a Petition for Rehearing in the Supreme Court, seeking rehearing of its August 28, 2014 Order.
9. On September 12, 2014, the District Court issued a temporary restraining order directing Fawkes and the Joint Board of Elections to place Hansen’s name on the November 4, 2014 general election ballot.

Fawkes presented exhibits admitted into evidence, as follows:

1. October 26, 2014 Press Release that Fawkes “has suspended Early Voting in the St. Croix District...”
2. General Election Official Ballot “SAMPLE” without Hansen as candidate; and “29/OCT/2014” shipping Invoice from SeaChange Printing, Minneapolis, MN to St. Croix Elections 24 packages (753.6 lbs) “Ballots.”

10. On September 12, 2014, the Supreme Court denied Fawkes' Petition for Rehearing.
11. On September 15, 2014, the St. Croix District Board of Elections directed Fawkes to place Hansen's name on the general election ballot, which Fawkes did.
12. At no time did Fawkes have any communications with Hansen or any member of the Joint Board or any other person in an attempt to have Hansen's name appear on the 2014 general election ballot. Fawkes testified credibly that at all times she sought to follow the law and the orders of all the courts before whom issues relating to the 2014 general election were pending.

October 29 Motion

From the evidence presented at the hearing or otherwise appearing in the record relevant to the October 29 Motion, the Court makes findings of fact, as follows:

1. On October 8, 2014, by Notice of Joinder and Adoption of Intervenor's Arguments, filed herein, Fawkes "joins in and adopts the arguments set forth in Intervenor Alicia 'Chucky' Hansen's Response to Bryan's Emergency Motion for Enforcement of Judgment and Contempt Sanctions' and Brief in Support dated October 6, 2014, and Intervenor Alicia 'Chucky' Hansen's Supplemental Brief Regarding the Supremacy Clause and the Binding Effect of the Federal District Court's Order dated October 8, 2014."
2. The 2014 general election was the first time in the Virgin Islands that a period of early voting had been instituted. Early voting was scheduled to take place from October 21, 2014 to October 31, 2014.
3. Ballots originally ordered for the St. Croix District 2014 general election included Hansen's name as a candidate for the Legislature, and were in use during the early voting period.
4. Fawkes received the Supreme Court's October 24, 2014 Order on Saturday, October 25, 2014, and immediately contacted the Attorney General's office and the Board for direction.
5. Early voting continued on Saturday and Sunday, October 25 and 26, 2014, with the use of the original ballots that included Hansen as a candidate. Fawkes sought and received legal advice from the Attorney General's office, wherein it was determined that it was better to instruct early voters that Hansen should not be on the ballot, rather than to send those voters away and possibly disenfranchise them. Early voters were specifically instructed that, even though Hansen's name appeared on the ballot, Hansen was not properly on the ballot. On Sunday, October 26, 2014, nine voters voted early and were instructed that Hansen should not appear on the ballot. Frorup observed Hansen's name on the ballot during the early voting period, although she did not recall on what dates she saw those ballots, and had no knowledge whether a decision was made to remove Hansen from the ballot.
6. On Sunday, October 26, 2014, Fawkes suspended early voting in the St. Croix District on that date "until further notice" and issued a press release to that effect. On the same day, a media campaign was launched via radio and television stations to inform voters that early voting was suspended effective immediately, and that Hansen was ineligible as a candidate.
7. Because the ballot printer, Elections System & Software, was not open on the weekend, Fawkes ordered new ballots from with Hansen's name eliminated, on Monday, October 27, 2014. A sample ballot (Fawkes Exhibit 2) without Hansen's name was received and approved

October 28, 2014. The official ballots, without Hansen's name, were shipped October 29, 2014 and received in St. Croix October 31, 2014, and were immediately put in use.

8. Before October 25, 2014, the elections office distributed absentee ballots that included Hansen's name to voters who would not be present to vote on election day. Upon receipt on October 25, 2014 of the Supreme Court's October 24, 2014 Order, Fawkes conferred with counsel and it was determined that prospective absentee voters would not be turned away on account of the fact that Hansen's name was on the ballot. Rather than disenfranchise voters who would be off-island on election day, the original ballots were to be used for any such prospective absentee voters, who would be instructed that Hansen's name should not be on the ballot. No evidence was presented as to how many, if any, absentee ballots were requested and distributed between October 25, 2014 and receipt on October 31, 2014 of the final ballots with Hansen's name excised. Bascombe was not on island on election day and voted by absentee ballot. She recalls seeing Hansen's name on the absentee ballot, although she cannot recall on what date she received her absentee ballot.
9. Following the October 24, 2014 Order, in discussions with counsel and the St. Croix Board, Fawkes considered affixing an adhesive sticker over Hansen's name to ballots distributed to early voters and absentee voters. However, it was determined that such stickers would cause problems with the reading of votes in the electronic machines, so that was not implemented.
10. The 2014 general election was conducted on November 4, 2014 with the official ballots without the name of Hansen as candidate.

Discussion

Criminal contempt sanctions may be imposed only upon a finding that the evidence presented has established beyond a reasonable doubt that Fawkes willfully disobeyed a court order or obstructed justice. Bryan cites Super. Ct. R. 111⁹ to support his contention that Fawkes, by her actions in the consolidated District Court cases, should be held in criminal contempt for willfully violating the August 28 and August 29, 2014 Orders of the Supreme Court and Superior Court, respectively. September 18 Motion, at 7. Bryan argues that although Fawkes placed Hansen's name back on the ballot because she was ordered to do so, "a proper examination into how the District Court order was procured" will reveal that "Fawkes 'willfully' violated this Court's order." *Id.* The September 18 Motion the October 29 Motion are addressed separately.

⁹ Superior Court Rule 111 states:

Where an order has been made directing a person to do or refrain from doing certain acts and it shall appear to the court that the offending party or parties have failed to comply with the order theretofore made, the court shall upon notice of the offending party or parties hear the matter in a summary manner and upon a finding that the party or parties have willfully violated terms of the order, may commit the offender or offenders to jail, place them on probation or fine them as shall seem to the court meet and just.

September 18 Motion: Collusion in the District Court Case

Bryan quotes the 6th edition of Black's Law Dictionary (1990) to define collusion as "[a]n agreement between two or more persons... to obtain an object forbidden by law. It implies the existence of fraud of some kind, the employment of fraudulent means or of lawful means for accomplishment of an unlawful purpose." September 18 Motion, at 9-10.

Bryan has presented no evidence of an agreement between Fawkes and Hansen, but relies upon circumstances to which he ascribes sinister motives. He argues that "It is apparent that both Fawkes and Hansen disagreed with the [August 28, 2014] ruling of our Supreme Court, and the subsequent order by this Court to set aside Hansen's nomination papers filed in May 2014, and to remove her name from the general election ballot." *Id.* at 10. The evidence does not establish, either beyond a reasonable doubt, or clearly and convincingly, notwithstanding Bryan's conjecture, that Fawkes disagreed with the Courts' Orders or, more to the point, that she collusively acted upon such disagreement to disobey the Supreme Court's Order. The circumstances cited by Bryan, generally set forth above herein, are every bit as conducive to a finding that the mindset of Fawkes was precisely as she testified - that she sought legal guidance with the purpose of following the law and the orders of all courts.¹⁰ As the Supreme Court noted, Fawkes found herself "faced with two contradictory orders."¹¹ In light of the Supreme Court's August 28, 2014 Order, Fawkes advised Hansen by letter of September 2, 2014 that "your Nomination Paper seeking a Senatorial Seat in the 31st Legislature has been disqualified." The following day Hansen was pardoned, yet Fawkes refused to place Hansen's name back on the general election ballot, prompting the new litigation in the District Court. Fawkes acted to place Hansen on the ballot only after the District Court ordered post-pardon that Hansen be placed on the ballot, after this Court's post-pardon Order denying Bryan's Emergency Motion for Enforcement of Judgment, after seeking advice of counsel, and after the majority vote of the St. Croix District Board of Elections affirmed that Hansen's name should be placed on the ballot.

¹⁰ Fawkes was represented in the consolidated District Court cases by the Office of the Attorney General, who had a week earlier opined that a pardon would restore to Hansen "all her civil rights so that she may be placed on the general election ballot for 2014" upon her timely resubmission of her nomination paper to the Supervisor of Elections. As Fawkes' counsel's legal opinion was consistent with the position of Hansen in the District Court, the fact that Fawkes "proffer[ed] the identical arguments given by Hansen" (September 18 Motion, at 11) does not support the inference of collusion between Fawkes and Hansen, but rather that, with advice of counsel, Fawkes believed that Hansen's pardon and her resubmission of nomination papers would cure the legal impediment to her placement on the 2014 general election ballot.

¹¹ *Bryan v. Fawkes*, 61 V.I. at 432.

In this factual context, Bryan's bald assertions and speculation as to Fawkes's subjective intent aside, the evidence and record before the Court do not establish that Fawkes and Hansen, or any other person, colluded to ensure that Hansen's name appear on the 2014 ballot, or that Fawkes acted in any manner to "willfully" violate the August 28 and 29, 2014 Orders of the Supreme Court and this Court. As such, the Court finds no proof beyond a reasonable doubt of collusion or willful violation of the August 28 and 29, 2014 Orders to justify imposition of criminal contempt sanctions against Fawkes with regard to the District Court action.

Further, the record evidence also does not reveal clear and convincing proof that Fawkes failed to comply with Orders that, in the extant circumstances, were clear and unambiguous, and that Fawkes failed to diligently attempt to comply in a reasonable manner with applicable judicial orders.¹² Accordingly, no finding of civil contempt can enter against Fawkes on this record, and the September 18 Motion seeking imposition of contempt sanctions against Fawkes will be denied.

October 29 Motion: Disobedience of October 24, 2014 Supreme Court Order

By his October 29 Motion, Bryan seeks imposition of criminal or civil contempt sanctions against Fawkes for willfully violating the Supreme Court's October 24, 2014 Order. The thrust of his Motion is set forth in Bryan's Affidavit attached to the Motion: "That I witnessed the Office of Election, under the supervision of Fawkes and Deputy Supervisor Genevieve Whitiker [sic], distributing to the voting public election ballots with Hansen's name to absentee voters and early voters who made requests for such ballots after the Supreme Court's October 24, 2014 [Order], and after the Board Members and Fawkes were knowledgeable of the Court's mandate." October 29 Motion, Exhibit B ¶6.

At the February 8, 2017 hearing, Hansen asserted that the Supreme Court's Order required only that Hansen be removed from the general election ballot for the November 4, 2014 general election; thus, even if Hansen's name continued to be listed on early voting ballots or absentee ballots, such evidence cannot be used to show a willful violation of the Order. The assertion is meritless. Even if technically consistent with the language of the October 24, 2014 Order that Hansen's name be removed from the general election ballot, the clear import of the Order was to remove Hansen as a candidate on the ballot of any voter whose vote would be counted in the 2014 general election.

¹² See *In re Burke*, 50 V.I. at 352.

Following learning of the Supreme Court's October 24, 2014 Order on Saturday, October 25, 2014, Fawkes caused replacement ballots to be ordered when the ballot printer opened following the weekend, on Monday, October 27, 2014. A sample ballot, without Hansen's name, was received and approved on October 28, 2014, and shipment of the replacement ballots was ordered that day. Those final official ballots without Hansen's name were shipped October 29, 2014, were received in St. Croix October 31, 2014, and were used in the general election on November 4, 2014.

At the hearing, Fawkes testified as to the dilemma in which she found herself with regard to early and absentee voting when she learned of the Supreme Court's Order. The early voting period was in process, with use of ballots that included Hansen's name. Upon consultation with counsel and Board members on October 25, 2014, Fawkes determined to suspend early voting the following day, Sunday, October 26, 2014. Fawkes issued a press release and began a television and radio media campaign advising of the suspension of early voting effective October 26, 2014 "until further notice," and further advising of the removal of Hansen's name from the ballot in accordance with the Supreme Court's Order. Nine voters who appeared for early voting on October 26, 2014, before the suspension of early voting, were not turned away, but allowed to vote. Each of those voters was specifically instructed that Hansen's name should not appear on the ballot, but that there were no ballots yet available excluding Hansen as a candidate.

No evidence was presented as to how many, if any, absentee ballots were requested and distributed to voters who would be away on November 4, 2014 during the period between October 25, 2014 and receipt of the corrected final ballots. Upon consultation with counsel and Board members, Fawkes determined not to turn away and disenfranchise any such potential absentee voters who did appear. Instead, each such voter was to receive the existing ballot, that included Hansen's name, with receive specific instructions that Hansen's name should not be on the ballot, but that the existing ballot had to be used until the corrected ballots became available.

The Supreme Court recognized that specific performance of its Order "is somewhat complicated by the fact that absentee ballots have been printed and early voting has begun, all of which include Hansen as a candidate for membership in the 31st Legislature.... Unquestionably, enforcing the August 29, 2014 order in a way that would render invalid absentee and early votes that have already been cast in favor of Hansen would violate the fundamental political right to vote." 61 V.I. at 467-68 (citations omitted).

At issue here is the directive of the Supreme Court “hereby order[ing] Fawkes to immediately recall all ballots with Hansen’s name and replace them with ballots omitting her as a candidate, or to otherwise remove Hansen’s name from the ballot, such as by covering her name with an adhesive sticker.” *Id.* at 474. Fawkes fully complied with the directive to “immediately recall... and replace” ballots including Hansen’s name on October 31, 2014, when the replacement ballots arrived. The Supreme Court suggested as a means of “recall” the “covering of her name with an adhesive sticker.” Fawkes determined that such a sticker would prevent the electronic voting machine from properly reading the ballots. Recognizing that “to disenfranchise a single voter is a matter for grave concern,”¹³ Fawkes implemented a different method of “recall” – to use the existing ballots, with the specific instructions to all voters who used the ballots that Hansen’s name should not appear on the ballot.¹⁴ The Court cannot find that in the existing circumstances that Fawkes actions were unreasonable or can be deemed a willful failure to comply with the Supreme Court’s Order.

Because there is no evidence in the record to justify a finding beyond a reasonable doubt that Fawkes acted to willfully violate the October 24, 2014 Order, the Court will not impose criminal contempt sanctions against Fawkes as sought by the October 29 Motion. Similarly, the record does not reveal by clear and convincing evidence that Fawkes failed to comply with a “clear and unambiguous” order of the Supreme Court, or that she failed to diligently attempt to comply in a reasonable manner with such order. Accordingly, no finding of civil contempt against Fawkes is appropriate on this record, and the October 29 Motion seeking imposition of criminal and civil contempt sanctions against Fawkes will be denied. In light of the foregoing, it is hereby

ORDERED that Petitioner’s September 18 Motion is DENIED. It is further

ORDERED that Petitioner’s October 29 Motion is DENIED.

April 20, 2017

ATTEST: Estrella George
Clerk of the Court

By: [Signature]
Court Clerk Supervisor
4/20/17

[Signature]
DOUGLAS A. BRADY
Judge of the Superior Court
CERTIFIED TO BE A TRUE COPY
This 21 day of APRIL 2017
ESTRELLA GEORGE
CLERK OF THE COURT

By: [Signature] Court Clerk

¹³ *Bryan v. Fawkes*, 61 V.I. 478 (Cabret, J., concurring in part, dissenting in part) (citation and quotation omitted).

¹⁴ Any claim of Hansen that voters who would have otherwise voted for her as a write-in candidate but may have been dissuaded by the instructions of elections officials that Hansen’s name should not appear on the ballot is not relevant to the issues herein.