

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN

**IVY MOSES, LAWRENCE BOSCHULTE,)
LYDIA HENDRICKS, ALECIA WELLS,)
ARTURO WATLINGTON, as members of)
The ST. THOMAS – ST. JOHN DISTRICT)
BOARD OF ELECTIONS, GLEN)
WEBSTER, and BARBARA)
JACKSON-McINTOSH, as members of)
The ST. CROIX BOARD OF ELECTIONS,)**

Plaintiffs,)

v.)

**CAROLINE FAWKES, *as* SUPERVISOR)
OF ELECTIONS, and GOVERNMENT)
OF THE VIRGIN ISLANDS,)**

Defendants.)

CASE NO: ST-16-CV-285

**ACTION FOR TEMPORARY
RESTRAINING ORDER,
PRELIMINARY
INJUNCTION AND
DECLARATORY
JUDGMENT**

MEMORANDUM OPINION

THIS MATTER is before the Court on Plaintiffs' Complaint and Motion for Preliminary Injunction filed on May 27, 2016.¹ The matter came on for hearing on the motion for preliminary injunction on June 15, 2016. Based on the following opinion, the Court will deny Plaintiffs' request for preliminary injunction and direct Plaintiff Moses to resign from her position on the Board of Elections or withdraw her nomination papers for election to the Legislature.

¹ Also pending are Defendants' Counterclaim and Plaintiffs' Motion to Dismiss Defendants' Counterclaim. Neither will be decided in this opinion.

FACTS

All plaintiffs are sitting members on a board of elections; Ivy Moses, Lawrence Boschulte, Lydia Hendricks, and Alecia Wells are members of the Board of Elections for the District of St. Thomas – St. John, and Glen Webster and Barbara Jackson-McIntosh are members of the Board of Elections for the District of St. Croix. Plaintiff Ivy Moses, the lead plaintiff, sits on the Board of Elections and is the only plaintiff seeking election to the Legislature of the Virgin Islands. The remaining plaintiffs have joined in sympathy to her cause.²

Plaintiff Ivy Moses was elected to the Board of Elections for the District of St. Thomas – St. John in the November 2014 election cycle. She took office in January 2015 and holds one of the two seats designated for residents of St. John. All members of the Board of Elections are elected to four year terms and their terms are staggered. The statute at issue in this case became law in December 2014, after Moses had been elected to the Board, but before she took office.³

On or about May 16, 2016, Moses filed her nomination papers to run in the Democratic primary as a candidate for the Legislature. On or about May 19, 2016, the Supervisor of Elections issued Moses a Notice of Defect as to two issues: her

² Defendants challenge the standing of all plaintiffs, except Plaintiff Moses. Separately, Plaintiffs challenge the office of the Attorney General representing Defendant Caroline Fawkes in her official capacity as Supervisor of Elections. The Court will not decide either of these issues in this opinion.

³ See *infra* text accompanying notes 13 & 14. The statute at issue was promulgated in Act No. 7699. The Act was passed by the legislature in late 2014, vetoed by the then sitting Governor of the Virgin Islands, and the veto was over-ridden in late December 2014.

address was allegedly stated incorrectly and her noncompliance with the provision of Title 18 V.I.C. § 2 that requires a member of the board of elections running for another office to resign from the board. Moses signaled her refusal to resign in a response letter on May 23, 2016 and the Supervisor issued a Notice of Disqualification on May 25, 2016. Plaintiffs filed suit two days later.

PROCEDURAL HISTORY

Plaintiffs' Complaint alleges that Defendant Fawkes, acting pursuant to 18 V.I.C. § 2, disqualified Plaintiff Ivy Moses from the Democratic primary for Senator of the St. Thomas – St. John District because Moses is a sitting member of the St. Thomas – St. John Board of Elections who refused to resign from her post before filing her nomination papers. Plaintiffs simultaneously filed a Motion for a temporary restraining order and preliminary injunction.

The Court quickly granted the temporary restraining order because the casting of the lots for the senate position was to take place at 5:30 p.m. that same day and the Court did not want to risk the possibility of permanent injury to Plaintiff Moses. Defendants filed their Answer, Defenses, and Counterclaim on June 10, 2016. The Counterclaim asks the Court to: (1) declare that Moses's action constitutes a conflict of interest; (2) order Moses to either resign from her position on the St. Thomas – St. John Board of Elections or withdraw her nomination petition for senate by June 21,

2016; and (3) grant other relief that the Court deems necessary.⁴ The matter then came on hearing on preliminary injunction on June 15, 2016.⁵

LEGAL STANDARD

“[F]our factors are relevant to deciding a motion for a preliminary injunction: (1) whether the movant has shown a reasonable probability of success on the merits; (2) whether the movant will be irreparably injured by denial of the relief; (3) whether granting preliminary relief will result in even greater harm to the nonmoving party; and (4) whether granting the preliminary relief will be in the public interest.”⁶ “[T]he Superior Court must evaluate the moving party's showing on all four factors under a sliding-scale standard.”⁷ “In conducting this sliding-scale analysis, the Superior Court must make findings on each of the four factors and determine whether — when the factors are considered together and weighed against one another — the moving party has made a clear showing that it is entitled to injunctive relief.”⁸ “[T]he party seeking an injunction [bears] the burden of proof as to all four factors.”⁹ Thus, if the Court concludes that Plaintiffs’ probability of success on the merits is essentially zero, the Court need not consider the remainder of the factors.¹⁰

⁴ Defendants oppose the request for a preliminary injunction and both parties have filed supplemental briefs.

⁵ The parties later agreed to consolidate the hearing on the preliminary injunction with the hearing on the merits. See Plaintiffs’ Agreement to a Consolidation of the Hearing on the Preliminary Injunction with a Hearing on the Merits filed June 16, 2016; see also Defendants’ Notice to the Court filed June 17, 2016. However, the Court will apply the factors for preliminary injunction and only rule on the motion for preliminary injunction at this time.

⁶ *3RC & Co. v. Boynes Trucking Sys.*, 2015 V.I. Supreme LEXIS 22, *5 (V.I. 2015).

⁷ *3RC & Co.*, 2015 V.I. Supreme LEXIS 22, at *18.

⁸ *Id.* (internal quotations omitted).

⁹ *Appleyard v. Gov. Juan F. Luis Hosp. & Med. Ctr.*, 61 V.I. 578, 591 (V.I. 2014).

¹⁰ *Marco St. Croix, Inc. v. V.I. Hous. Auth.*, 62 V.I. 586, 590 n.2 (V.I. 2015).

ANALYSIS

Plaintiffs do not challenge whether the Supervisor of Elections correctly applied 18 V.I.C. § 2. Thus, for Plaintiffs to demonstrate a reasonable probability of success on the merits, the statute at issue must violate Plaintiffs' constitutional rights. Thus, if the Court holds that the statute is constitutional, Plaintiffs' Complaint necessarily fails and the Court need not evaluate the case "through the lens of the injunctive factors."¹¹

Plaintiffs dispute the constitutionality of an amendment by way of an addition to 18 V.I.C. § 2 which provides:

"[n]o member of a Board of Elections may be a candidate for any other public office during the term for which the member was elected. Any member of a Board of Election must resign his position on the board as a condition of seeking any other public office."¹²

("2014 Amendment").¹³

Plaintiffs challenge the constitutionality of the 2014 Amendment based upon the First and Fourteenth Amendments. While the 2014 Amendment is a recent addition to the Virgin Islands Code, many states have enacted similar statutory

¹¹ See *Mapp v. Fawkes*, 61 V.I. 521, 531 n.7 (V.I. 2014) ("[I]n this case the Superior Court's November 1, 2014 hearing constituted both a hearing on a request for a preliminary and permanent injunction and a trial on the merits, with the Superior Court ultimately dismissing Mapp and Sarauw's [Plaintiffs'] entire complaint with prejudice. As such, we — as the Superior Court did below — dispose of this case on the merits, rather than through the lens of the injunction factors.").

¹² 18 V.I.C. § 2.

¹³ See Act 7699.

provisions, commonly referred to as resign-to-run statutes. The constitutionality of many of these statutes has been tested and upheld in state or federal courts.¹⁴

I. THE 2014 AMENDMENT DOES NOT SIGNIFICANTLY ENCROACH ON PLAINTIFF MOSES'S FOURTEENTH AMENDMENT EQUAL PROTECTION RIGHTS

“The Equal Protection Clause of the Fourteenth Amendment is essentially a direction that all persons similarly situated should be treated alike.”¹⁵ “Classifications are set aside only if they are based solely on reasons totally unrelated to the pursuit of the State's goals and only if no grounds can be conceived to justify them.”¹⁶ The U.S. Supreme Court has “departed from traditional equal protection principles only when the challenged statute places burdens upon ‘suspect classes’ of persons or on a constitutional right that is deemed to be ‘fundamental.’”¹⁷ With respect to classifications which restrict ballot access, the Supreme Court has departed from its traditional standard of review when it confronted statutes that discriminated based on wealth¹⁸ or statutes that burden minority political parties.¹⁹ In addition, the

¹⁴ See e.g. *Clements v. Fashing*, 457 U.S. 957, 963 (1982); *Fasi v. Cayetano*, 752 F. Supp. 942, 952 (D. Haw. 1990); *Morial v. Judiciary Com. of Louisiana*, 565 F.2d 295, 302 (5th Cir. 1977); *State ex rel. Shevin v. Stone*, 279 So. 2d 17, 21 (Fla. 1972); *Yonts v. Commonwealth*, 700 S.W.2d 407, 408 (Ky. 1985).

¹⁵ *Webster v. People of the Virgin Islands*, 60 V.I. 666, 673 (V.I. 2014) (internal quotations omitted) (citing *Lawrence v. Texas*, 539 U.S. 558, 579 (2003)).

¹⁶ *Clements*, 457 U.S. at 963.

¹⁷ *Id.*

¹⁸ *Bullock v. Carter*, 405 U.S. 134, 143-144 (1972).

¹⁹ *Clements*, 457 U.S. at 964. The line of cases which protect small political parties via equal protection also protects the small party participants' First Amendment rights. The Court cannot discern the Plaintiffs' argument that Section 2 burdens their First Amendment rights from their Motion for Temporary Restraining Order and Permanent Injunction. Presumably it arises from the *Clements* holding but because the Plaintiff in this case is running for the Legislature on the Democratic platform, the portion of the *Clements* holding regarding protection for minority political parties does not apply.

Supreme Court of the United States has held that candidacy is “far from” a fundamental right for purposes of equal protection analysis.²⁰

In making an equal protection challenge, it is the claimant's burden to “demonstrate in the first instance a discrimination against [him] of some substance.”²¹ “Classification is the essence of all legislation, and only those classifications which are invidious, arbitrary, or irrational offend the Equal Protection Clause of the Constitution.”²²

Plaintiffs argue that the 2014 Amendment violates their Fourteenth Amendment equal protection rights. They challenge the 2014 Amendment’s disparate treatment of board members running for other office as compared to board members running for reelection as well as all other government employees. Though the 2014 Amendment does not discriminate based on wealth or burden a minority political party, traditional equal protection review of the statute is not automatic.²³ The Court must still consider the extent to which the challenged section “unnecessarily burdens the availability of political opportunity” of the Plaintiff.²⁴

²⁰ *Id* at 963; see also *Barry v. District of Columbia Board of Elections & Ethics*, 448 F. Supp. 1249, 1252 (D.C. 1978) (“Plaintiff's right to candidacy is an important but not constitutionally “fundamental” right.”).

²¹ *American Party of Texas v. White*, 415 U.S., 767, 781 (1974).

²² *Clements*, 457 U.S. at 967.

²³ *Id.* at 965.

²⁴ *Id.*; see also *Sagan v. Pennsylvania*, 542 F. Supp. 880, 882 (W.D. Pa. 1982) (internal citations omitted).

A. The 2014 Amendment does not significantly burden Plaintiff Moses

With respect to the burden on Moses's interest in candidacy, the Court finds *Clements* particularly instructive. In *Clements*, the Supreme Court of the United States reviewed a pair of state restrictions on candidates for public office. Article III § 19 of the Texas Constitution, one of the laws challenged in *Clements*, prohibits public officials from cutting their terms short in order to serve in the Texas Legislature. Section 19 requires that the official complete his term before serving in the Texas Legislature. *Clements* briefly examined the burden that § 19 cast upon one of the plaintiffs and ultimately held that the two year "waiting period" created by § 19 constituted a de minimis encumbrance on candidacy.

Clements also examined Article XVI § 65 of the Texas Constitution, which requires those holding certain state offices to automatically resign before becoming a candidate for any other office unless the unexpired portion of the current term is one year or less.²⁵ The Court found the encumbrance imposed by § 65 less burdensome than § 19 because the officials subject to § 65 could simply resign to run for office.

"In making an equal protection challenge, it is the claimant's burden to demonstrate in the first instance a discrimination against him of some substance."²⁶ Here, Plaintiff Moses points to the requirement of resignation to demonstrate the burden imposed on her by the 2014 Amendment. The 2014 Amendment discriminates neither on the basis of political affiliation nor on any factor not related to a candidate's

²⁵ *Clements*, 457 U.S. at 970.

²⁶ *Id.* at 967.

qualifications to hold political office.²⁷ Unlike filing fees or level-of-support requirements that were the subject of many a ballot access case analyzed by the Supreme Court, the 2014 Amendment in no way burdens access to the political process by those who are outside the "mainstream" of political life. To the contrary, common sense dictates that those who have already been elected to a board of elections must have tendered enough public support that they could not conceivably be thought of as outsiders. In this case, the 2014 Amendment burdens Plaintiff Moses, a candidate who mounted a successful candidacy to a board of elections but who wishes to pursue a seat in another elected office, solely on account of her political aspirations.

The 2014 Amendment only prohibits a board of election member from running for another office during her tenure as a board member. Thus, because the term for board of elections members is four years, the largest burden that could possibly be imposed by the 2014 Amendment is a "waiting period" of just over two and one half years.²⁸ Like §§ 19 and 65 in *Clements*, here, the establishment of a maximum "waiting period" of two and one half years for candidacy by a board of elections member constitutes a de minimis burden on the political aspirations of Plaintiff Moses. Furthermore, like § 65, the burden is lessened by the fact that Moses may

²⁷ See *id.* The parties did not provide, nor is the Court aware of any precedential or highly influential case which held that elected public officials were a suspect class for purposes of Equal Protection Analysis.

²⁸ See *id.* Plaintiff Moses's tenure as a member of the St. Thomas - St. John Board of Elections began in January 2015, therefore, at the time she filed nomination papers for the V.I. Legislature she was approximately 16 months into her 48 month term. Had she complied with the 2014 Amendment, she would have resigned approximately 32 months before the expiration of her term.

simply resign and avoid the waiting period. Thus, the sort of insignificant interference with access to the ballot created by the 2014 Amendment does not significantly burden Plaintiff Moses.²⁹ As a result, the Court will apply traditional equal protection review to the 2014 Amendment.

B. Review of the 2014 Amendment

In deciding that § 19 rested on a rational predicate, *Clements* suggested that it furthered Texas's interest in discouraging an official from "abusing his position nor neglecting his duties because of his aspirations for higher office."³⁰ *Clements* held that § 19 and § 65 "serve essentially the same state interests" of preserving a positive public perception and preventing abuse of office.³¹ The Court finds the case at hand particularly analogous to *Clements*.³² The 2014 Amendment furthers the territorial interest in maintaining the functionality of the boards of elections during the elections cycle. The legislature advances this goal by precluding a board member from neglecting her position to campaign for another office during the election cycle, which is the most critical period in a board member's tenure.³³ One can easily conclude that a board member seeking other office must shift her attention to her campaign rather

²⁹ See *id.* at 968.

³⁰ *Id.* at 963.

³¹ *Id.*

³² See also *Fasi*, 752 F. Supp. at 953 (applying rational basis review to a resign-to run law); *Claussen v. Pence*, 2016 U.S. App. LEXIS 10541, *10 (7th Cir. Ind. June 10, 2016) (conducting equal protection review of state statute without reference to legislative history of subject law). Like other opinions applying traditional equal protection review, *Clements* did not conduct an in-depth analysis of the actual considerations of the law-making bodies which produced the laws in question.

³³ See *Clements*, 457 U.S. at 968; see also *Joyner v. Mofford*, 706 F.2d 1523, 1532 (9th Cir. 1983) (The resign to run statute "encourages an elected public official to devote himself exclusively to the duties of his office.").

than focusing her efforts solely on the duties of the board of election during its most active period.³⁴

Additionally, in *Claussen* the Seventh Circuit upheld a similar Indiana statute opining, “it is obvious that allowing civil servants to serve on a legislative body with the authority to set their own compensation provides an opportunity for self-dealing and gives the appearance of possible corruption.”³⁵ Like the law in *Claussen*, the 2014 Amendment mitigates any offensive abuse that may arise when a board member presides over an election in which she is a candidate.³⁶ For instance, the potential for conflict of interest arises when a board member is allowed to remain on the board to certify the results of an election in which he or she is a candidate. The 2014 Amendment also serves the territorial interest in maintaining positive public perception of its elected officials.³⁷ Allowing members of the boards of election to run

³⁴ See *Claussen*, 2016 U.S. App. LEXIS 10541, *10 (“Indiana has a genuine and compelling interest in avoiding corruption and self-dealing and the appearance of such things.”); See *Morial*, 565 F.2d at 302 (holding that Louisiana had a valid and compelling interest in eliminating even the appearance of impropriety that may result in the absence of a “resign to run” statute).

³⁵ See *Claussen*, 2016 U.S. App. LEXIS 10541, *10.

³⁶ *Id.*

³⁷ See *id.* The testimony taken in this case, while not dispositive with respect to the constitutionality of the issue, tends to support an appearance of impropriety in allowing board members to preside over election cycles in which they are vying for other office. Former board of elections member Wilma Marsh Monsanto testified that she took a leave of absence while running for the legislature and did not take part in any board decision while she was running for Senate due to the possibility of conflict of interest. Similarly, Arturo Watlington, Jr., a current board member and Plaintiff, testified that board member Lawrence Boschulte recused himself from taking part in any decision while Boschulte was running for other office. Most importantly, Plaintiff Moses testified that she recused herself from participating in any decisions of the board relating to the primary while she conducts her campaign for Senator. While Plaintiff Moses did not explicitly state that she perceived a conflict of interest would occur if she decided to remain active in board decisions relating to the primary while running for a seat in the Legislature, she did indicate that she believed recusal was the “professional” thing to do. While these three board members, Plaintiff Moses included, acted ethically, nothing in Title 18 of the Virgin Islands Code nor any provision within the formal internal procedures of the boards of elections compels a board member running for other office to act similarly. These considerations buttress the Legislature’s reasoning for passage of the 2014 Amendment. Again, while the testimony of present and past board members is not dispositive of the constitutionality question, it sheds light on the rational

for another office and certify election results during the election cycle undoubtedly provides an opportunity for the public to perceive self-dealing and impropriety.³⁸

Plaintiffs point out that the potential self-dealing implicated in overseeing an election in which a board member is a candidate also occurs when a board member runs for reelection. The Court does not doubt that the potential for self-dealing and the appearance of impropriety also exist when a board member runs for reelection to the board but is allowed to take part in board decisions. Yet, the 2014 Amendment does not burden board members running for reelection with the same “resign-to-run” provision as it does members running for other office. Plaintiffs argue that this difference necessarily renders the 2014 Amendment unconstitutional because it is not narrowly tailored. But, narrow tailoring of the law is unnecessary to survive traditional equal protection scrutiny. Moreover, in *Clements* the Supreme Court of the United States upheld a parallel provision of the Texas Constitution which applied a resign-to-run provision to public officials running for public office “*other than the office then held.*”³⁹ Thus, the Court will not question the constitutionality of a statute on the grounds asserted by Plaintiff when the United States Supreme Court already validated a statute with nearly identical impact in this regard.

Plaintiffs argue that other governmental employees are subject to a less restrictive means of discouraging self-dealing because they are only required to take

relationship between the 2014 Amendment and goal of preventing perceived or actual impropriety from those who are most intimately acquainted with the elections system.

³⁸ *Id.*

³⁹ *Clements*, 457 U.S. at 960. As a basis for finding § 65 Constitutional, the Supreme Court noted the same factors that this Court finds present here, including the possibility of self-dealing.

a leave of absence while running for office. *Clements* also clarifies that the legislature may approach regulation in a step-wise manner.⁴⁰ Thus, the Virgin Islands Legislature need not impact all government employees and officials equally in terms of candidacy restrictions.⁴¹ In the same vein, the Court will not require that the 2014 Amendment embody the least restrictive means of attaining the desired goal.⁴² If this were the standard, the Court would overturn almost every challenged statute by conjuring up a less restrictive means of reaching the desired goal.⁴³ It is not the Court's duty to second guess the inherent wisdom behind the statute.⁴⁴

To be sure, there are conceivable rationales for the differing treatment between board members running for other office and other government employees.⁴⁵ 18 V.I.C. § 2 requires non-elected government employees to take a leave of absence when running for elected office other than the board of elections and the board of education. If such a candidate fails to attain the desired office, she may return to her previous

⁴⁰ *Id.* at 969-970.

⁴¹ *Id.* at 971 ("The Equal Protection Clause does not forbid Texas to restrict one elected officeholder's candidacy for another elected office unless and until it places similar restrictions on other officeholders."); *Broadrick v. Oklahoma*, 413 U.S. 601, 607 n.5 (1973) ("[A] State can hardly be faulted for attempting to limit the positions upon which such restrictions are placed").

⁴² *Id.* at 969 ("under traditional equal protection principles a classification is not deficient simply because the state could have selected another means of achieving the desired end.").

⁴³ See *Citizens for John W. Moore Party v. Board of Election Comm'rs*, 794 F.2d 1254, 1258 (7th Cir. 1986). But, even if the Court did require the statute to encompass the least restrictive means, Section 2 would still pass the test. See *Morial*, 565 F.2d at 302 ("Even clearer is the reasonable necessity of the resignation requirement to the prevention of post-campaign abuse or its appearance. It is apparent that the prevention of post-campaign abuse calls for measures which are effective in the post-campaign period. A leave of absence for the duration of the campaign wholly fails to meet this requirement of post-campaign effectiveness; the state cannot be constitutionally faulted for failing to provide Judge Morial with a leave of absence.").

⁴⁴ *Brady v. Cintron*, 55 V.I. 802, 821 (V.I. 2011) ("[I]t is not the function of this Court to substitute its judgment for that of the Legislature.").

⁴⁵ See *Clements*, 457 U.S. at 969-970. In *Clements*, the Supreme Court disagreed with the district court's holding § 65 of the Texas Constitution unconstitutional because it only subjected certain classes of public officials to resign-to-run laws.

post. But, if a board of elections member were permitted to take a leave of absence during her pursuit of any other elected office then the board to which she belongs may not be able to form a quorum and fulfill its statutory obligations.⁴⁶

In enacting the 2014 Amendment, the Legislature inherently weighed the public interest in avoiding impropriety in the elections system (or at least the appearance thereof) versus the burden implicated on a board member and her potential constituency. The Court believes that the weighing of the interests involved is best conducted by the Virgin Islands Legislature, not by the Superior Court. The legislature has expressed its balancing of the interests at hand within the measures of the 2014 Amendment.⁴⁷ It is not the Court's duty to second guess the inherent wisdom behind the statute.⁴⁸ The Court concludes that the 2014 Amendment does not constitute the type of "invidious, arbitrary, or irrational" classification scheme which the Fourteenth Amendment was meant to curtail.

⁴⁶ To be clear, the St. Thomas/St. John Board of Elections (or the St. Croix Board of Elections) could still form a quorum if only one or two members decided to run for other office. But, if multiple members decide to run for other offices during the same election cycle then the board may lose its capacity to function due to its inability to form a quorum. However, when a member resigns to run for any other office, the Virgin Islands Code provides a mechanism for the vacancy to be filled. See 18 V.I. C. § 41(f). Therefore, the work of the board is not adversely affected.

⁴⁷ At the Status Conference held on June 2, 2016, the Court asked the parties to provide the legislative history and transcript of the hearings when the bill that became Act No. 7699 was discussed or passed. However, neither party has supplied the court with a transcript.

⁴⁸ *Brady*, 55 V.I. at 821 ("[I]t is not the function of this Court to substitute its judgment for that of the Legislature.").

II. THE 2014 AMENDMENT DOES NOT INFRINGE ON PLAINTIFFS' FIRST AMENDMENT RIGHTS

As an alternative ground to support their Motion for Preliminary Injunction, Plaintiffs contend that the 2014 Amendment violates the First Amendment. Specifically, Plaintiffs argue that the 2014 Amendment “substantially limits” the pool of candidates, thus, burdening the voters’ freedom of association. But, as indicated above, the 2014 Amendment does not create any restrictions that single out political minorities.⁴⁹ Furthermore, the 2014 Amendment has a negligible impact on voters because a member sitting on a board of election may run for office, she must simply resign first.⁵⁰ Thus, Moses may still run and people may still support her and vote for her. The burden on Plaintiffs’ First Amendment interests in candidacy are so insignificant that the classifications contrived in the 2014 Amendment may be upheld consistent with traditional equal protection principles.⁵¹ The Territory's interests in maintaining functioning boards of election are sufficient to warrant the de minimis interference with Plaintiffs’ interests in candidacy.

⁴⁹ See *supra* pp. 8-9.

⁵⁰ See *Claussen*, 2016 U.S. App. LEXIS 10541 at *8.

⁵¹ See *Clements*, 457 U.S. at 971.

III. PLAINTIFFS MAY NOT CHALLENGE THE 2014 AMENDMENT AS AN UNCONSTITUTIONAL QUALIFICATION

Plaintiffs also claim that the 2014 Amendment serves as an unconstitutional qualification burdening individuals who intend to run for delegate to congress.⁵² But, as a general principle “if there is no constitutional defect in the application of the statute to a litigant, he does not have standing to argue that it would be unconstitutional if applied to third parties in hypothetical situations.”⁵³ The exception to this principle comes into play when a statute broadly prohibits speech protected by the First Amendment.⁵⁴ But, as this Court has already recognized, the 2014 Amendment does not constitute any more than a de minimis impediment on Plaintiffs’ First Amendment rights. As such, Plaintiff may only attack the constitutionality of the 2014 Amendment as it applies to the Plaintiffs.⁵⁵ None of the Plaintiffs in this case are running for delegate to congress. Thus, they may not challenge the constitutionality of the 2014 Amendment on grounds that it

⁵² More specifically, Plaintiffs allege that the 2014 Amendment unconstitutionally adds a qualification to the list enumerated in Pub. L. No. 92-271, § 3.

⁵³ *County Court v. Allen*, 442 U.S. 140, 155 (1979).

⁵⁴ *See Id.* Importantly, the Court does not cite this general principle as a jurisdictional requirement but instead applies it as a claims processing mechanism of judicial restraint to maintain efficiency in its docket while also allowing “full and fair” exploration of the issues. *See Benjamin v. AIG Ins. Co. of P.R.*, 56 V.I. 558, 564 (V.I. 2012).

⁵⁵ *See Clements*, 457 U.S. at 972 n.6 (“Baca [Plaintiff] may not challenge the provision’s application to him on the grounds that the provision might be unconstitutional as applied to a class of officeholders not before the Court.” (internal citation omitted). The First Amendment will not suffer if the constitutionality of § 19 is litigated on a case-by-case basis.”).

impermissibly adds qualifications to those set by the federal government with respect to the Virgin Islands delegate to congress.

As a result of the foregoing analysis, the Court finds that the 2014 Amendment does not unconstitutionally restrict the rights of the members of the boards of election. Thus, because Plaintiffs must make at least some showing on each factor for a preliminary injunction and because they cannot prevail on first factor as a matter of law, the Court need not examine the remaining factors in denying Plaintiffs' request for preliminary injunction.⁵⁶

CONCLUSION

Plaintiffs have not met their burden of proving a constitutional violation under the Fourteenth Amendment or the First Amendment.

Plaintiffs may not challenge the 2014 Amendment as an unconstitutional qualification on individuals running for delegate to congress.

Plaintiff Moses does not have a fundamental right to run for the Virgin Islands Legislature. The 2014 Amendment does not significantly burden Plaintiff Moses as she merely has to either resign from her seat on the Board of Elections for the District of St. Thomas – St. John or wait just over two years in order to run for the Legislature.

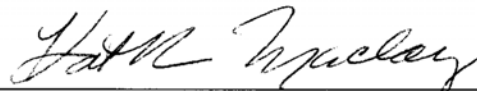
The 2014 Amendment is upheld consistent with traditional equal protection principles. The Territory's interests in maintaining functioning boards of election are

⁵⁶ See *Mapp*, 61 V.I. at 531 n.7; see also *Virgin Islands Taxi Association v. Virgin Islands Port Authority*, 2016 V.I. LEXIS 69, *19 (V.I. Super. Ct. June 8, 2016).

sufficient to warrant the de minimis interference with Plaintiffs' interests in her candidacy.

Therefore, Plaintiffs' Motion for Preliminary Injunction will be denied.

DATED: June 24, 2016

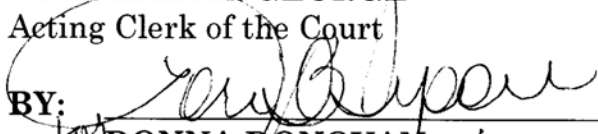


Kathleen Mackay
Judge of the Superior Court
of the Virgin Islands

ATTEST:

ESTRELLA H. GEORGE
Acting Clerk of the Court

BY:


DONNA DONOVAN
Court Clerk Supervisor 6/24/16