For Publication

IN THE SUPREME COURT OF THE VIRGIN ISLANDS

LILLIANA BELARDO DE O'NEAL, GLEN WEBSTER, ADELBERT "BERT" BRYAN, RAYMOND J. WILLIAMS, EPIPHANE JOSEPH, LISA HARRIS-MOORHEAD, ARTURO WATLINGTON, JR., LYDIA HENDRICKS, CARLA JOSEPH, MAURICE A. DONOVAN JR., ALECIA WELLS, DIANE J. MAGRAS-URENA, and IVY K. MOSES, Appellants/Defendants, v. **GOVERNMENT OF THE VIRGIN ISLANDS,** Appellee/Plaintiff.	**S. Ct. Civ. No. 2018-0040** Re: Super. Ct. Civ. No. 192/2018 (STT)

On Appeal from the Superior Court of the Virgin Islands
Division of St. Thomas & St. John
Superior Court Judge: Hon. Denise M. Francois

Considered and Filed: June 8, 2018

BEFORE: **RHYS S. HODGE**, Chief Justice; **MARIA M. CABRET**, Associate Justice; and **IVE ARLINGTON SWAN**, Associate Justice.

APPEARANCES:

Julita K. de Leon, Esq.
Julita De Leon, PLLC
St. Thomas, U.S.V.I.
Attorney for Appellants,

Su-Layne U. Walker, Esq.
Assistant Attorney General
St. Thomas, U.S.V.I.
Attorney for Appellee.

OPINION OF THE COURT

HODGE, Chief Justice.

The appellants, who at the time the notice of appeal was filed had all been previously

elected members of either the St. Croix Board of Elections or the St. Thomas-St. John Board of Elections (collectively "members"), appeal from the Superior Court's May 10, 2018 judgment finding them in violation of Act No. 7892 as amended by Act No. 7982, which directed that the St. Croix Board of Elections and St. Thomas-St. John Board of Elections be merged into a single board of elections. For the reasons that follow, we affirm.

I. BACKGROUND

In the 2014 general election, Adelbert "Bert" Bryan, Raymond J. Williams, and Barbara Jackson-McIntosh were elected to the St. Croix Board of Elections, while Carla Joseph, Diane J. Magras-Urena, and Ivy K. Moses were elected to the St. Thomas-St. John Board of Elections, all for terms to expire in 2018. In the 2016 general election, Lilliana Belardo de O'Neal, Glenn Webster, Epiphane Joseph, and Lisa Harris-Moorhead were elected to the St. Croix Board of Elections, while Arturo Watlington, Jr., Lydia Hendricks, Maurice A. Donovan, and Alecia Wells were elected to the St. Thomas-St. John Board of Elections, all for terms to expire in 2020.

At the time these individuals were elected, Virgin Islands law provided for separate boards of elections for each district, and for the members of the district boards to also comprise a Joint Board of Elections. However, on January 1, 2017, Act No. 7892 went into effect, which amended section 41(a) of title 18 of the Virgin Islands Code to provide that "There is a single Board of Elections that governs both election districts." Subsequently, the Legislature enacted Act No. 7982, which amended Act No. 7892 by postponing the effective date to July 31, 2017, so that the St. Thomas-St. John Board of Elections could conduct a legislative special election in that district. However, Act No. 7982 expressly provided that "[b]y August 1, 2017, all members of the district boards of elections shall convene as a single board of elections, elect from among its members a chairman and vice chairman, and establish procedures for the board's operation." Despite this

directive, the members of the St. Croix Board of Elections and the St. Thomas-St. John Board of Elections did not convene as a single board by August 1, 2017, but instead continued to meet as separate boards, including enacting substantive policies. While the members did meet as the Joint Board of Elections on December 22, 2017, and April 13, 2018, officers were not elected, and no substantive business occurred.

On April 11, 2018, the Government of the Virgin Islands sued, in their official capacities, all but one of the individuals previously elected to serve on the St. Croix Board of Elections and St. Thomas-St. John Board of Elections who, by virtue of Act No. 7982, were members of the new single board of elections.[1] In its complaint, the Government sought a declaratory judgment that the members violated Virgin Islands law by failing to convene as a single board and electing officers, that all decisions made by the district boards after August 1, 2017, were null and void, and that under Act Nos. 7892 and 7982 the single board of elections is the only policymaking body that can establish procedures for elections within the Virgin Islands. The Government also sought injunctive relief, in the form of an order compelling the members to convene forthwith as a single board, and to enjoin the members from conducting meetings as the St. Croix Board of Elections, the St. Thomas-St. John Board of Elections, or the Joint Board of Elections in violation of Virgin Islands law.

The Superior Court denied the request for a temporary restraining order, but held an expedited trial on the merits on April 23, 2018, and issued its judgment, together with findings of fact and conclusions of law, on May 10, 2018. The Superior Court determined that the Legislature,

[1] The Government declined to sue Barbara Jackson-McIntosh because, in her former capacity as Chair of the Joint Board of Elections, she supported the implementation of Act Nos. 7892 and 7982.

in enacting Act Nos. 7892 and 7982, clearly intended to vest administration of the election system in a single board of elections. The Superior Court rejected the members' claim that the Legislature exceeded its powers under the Revised Organic Act of 1954 when it effectively ordered the merger of the St. Croix Board of Elections and the St. Thomas-St. John Board of Elections into a single board as of August 1, 2017, and further rejected the contention that the Legislature shortened the terms of the elected members or eliminated election districts when it established the single board.[2] Finally, the Superior Court granted both the declaratory and injunctive relief that the Government sought in its complaint.

The members filed a notice of appeal on May 12, 2018, and on May 15, 2018, moved this Court to hear their appeal on an expedited basis. This Court granted the motion in a May 15, 2018 order. The members also sought a stay pending appeal from the Superior Court, which the Superior Court granted on May 17, 2018. Now that the parties have complied with the expedited briefing deadlines, the matter is ripe for a decision.[3]

II. DISCUSSION

A. Jurisdiction and Standard of Review

Pursuant to the Revised Organic Act of 1954, this Court has appellate jurisdiction over "all appeals from the decisions of the courts of the Virgin Islands established by local law[.]" 48 U.S.C. § 1613a(d). Title 4, section 32(a) of the Virgin Islands Code vests this Court with jurisdiction over

[2] The members have not re-asserted on appeal their claim that establishment of a single board had the effect of shortening their terms or eliminating election districts, and therefore any such argument is waived. *See* V.I. R. APP. P. 22(m).

[3] In seeking expedited review, the members requested this Court to review the matter on the briefs without oral argument. Appellees have not sought a contrary disposition. Accordingly, the matter has been submitted on the record.

"all appeals arising from final judgments, final decrees, [and] final orders of the Superior Court." Because the Superior Court's May 10, 2018 judgment resolved all of the claims in the Government's complaint, it is a final judgment within the meaning of section 32(a). *Joseph v. Daily News Publishing Co.*, 57 V.I. 566, 578 (V.I. 2012).

This Court exercises plenary review of the Superior Court's application of law, including constitutional questions. *Allen v. HOVENSA, L.L.C.*, 59 V.I. 430, 436 (V.I. 2013) (citing *St. Thomas–St. John Bd. of Elections v. Daniel*, 49 V.I. 322, 329 (V.I. 2007)).

B. Validity of Act Nos. 7892 and 7982

The members, as their primary issue on appeal, maintain that the Superior Court erred when it held that the Legislature could legally enact Act Nos. 7892 and 7982 to establish a single board of elections. Specifically, the members point to section 6(c) of the Revised Organic Act, which provides, in full, as follows:

> All officers and employees charged with the duty of directing the administration of the electoral system of the Virgin Islands and its representative districts shall be appointed in such manner as the legislature may by law direct: *Provided, however*, That members of boards of elections, which entities of government have been duly organized and established by the government of the Virgin Islands, shall be popularly elected.

48 U.S.C. § 1572(c). Although the first clause of section 6(c) unambiguously vests the Legislature with the authority to determine how those "charged with the duty of directing the administration of the electoral system . . . shall be appointed," the members maintain that the presence of the phrase "boards of elections" in the second clause reflects an intent by Congress to prohibit the Legislature from establishing a single board of elections.

While the Revised Organic Act does "serve[ ] as a de facto constitution for the Virgin Islands," *Fawkes v. Sarauw*, 66 V.I. 237, 247 (V.I. 2017), it is simultaneously a federal statute

adopted by Congress. Therefore, to determine what Congress meant when it included the phrase "boards of elections" in section 6(c), "the appropriate inquiry is to apply the rules of statutory construction to determine what Congress intended at the time it enacted this provision." *Bryan v. Fawkes*, 61 V.I. 201, 230-31 (V.I. 2014) (collecting cases). Importantly, as the Government correctly emphasizes in its brief, Congress has expressly instructed that "[i]n determining the meaning of any Act of Congress, unless the context indicates otherwise . . . words importing the plural include the singular."[4] 1 U.S.C. § 1.

The members do not dispute that Congress has expressed a clear intent for courts to interpret plural words in federal statutes as also encompassing the singular.[5] Nevertheless, the members, citing historical evidence that two boards of elections were in existence at the time Congress enacted the Revised Organic Act, contend that Congress intended only the plural in the

[4] In its May 10, 2018 findings of fact and conclusions of law, the Superior Court cited to a local statute, 1 V.I.C. § 41, for this same proposition. As the members correctly note in their brief, the Legislature lacks the authority to enact a statute that directs how the Revised Organic Act—or any other statute enacted by Congress—should be interpreted. *See Bryan*, 61 V.I. at 230 (citing *Limtiaco v. Camacho*, 549 U.S. 483, 489 n.2 (2007)). However, given that Congress adopted the same rule of construction through 1 U.S.C. § 1, the Superior Court's error in relying on the local statute rather than the federal statute is harmless. *See* V.I. R. APP. P. 4(i) ("No error or defect in any ruling . . . is ground for granting relief or reversal on appeal where its probable impact . . . is sufficiently minor so as not to affect the substantial rights of the parties.").

[5] We recognize that the Supreme Court of the United States held that an earlier version of 1 U.S.C. § 1 "is not one to be applied except where it is necessary to carry out the evident intent of the statute." *First Nat'l Bank in St. Louis v. Missouri*, 263 U.S. 640, 657 (1924). However, Congress amended 1 U.S.C. § 1 in 1948 to eliminate the discretionary language that had been relied upon by the Supreme Court in its interpretation of the earlier statute. *See* 62 Stat. 859 (June 25, 1948). As a result of that amendment, "the default rule of interpretation is to include both singular and plural, absent a contrary indication in the statute." *In re Cell Tower Records*, 90 F. Supp. 3d 673, 677 (S.D. Tex. 2015). *See also Bruce v. Samuels*, 136 S. Ct. 627, 632 n.4 (2016) (relying on 1 U.S.C. § 1 to hold that use of the plural "fees" in a statute includes the singular "fee"); *accord*, *Delpro Co. v. Brotherhood Railway Carmen*, 676 F.2d 960, 964 (3d Cir. 1982) (relying on 1 U.S.C. § 1 to conclude that it would "make[] no sense" to hold that Congress, by using the singular "carrier," intended to exclude the plural).

specific context of section 6(c). In other words, according to the members, "[g]iven that Congress was aware of the district boards' existence prior to enacting Section 6(c), it is unreasonable for the Superior Court to find that Congress intended the singular form or that the plural and the singular form are interchangeable." (Appellants' Br. 23.)

The members' proposed interpretation of section 6(c) lacks merit. As a threshold matter, it is well-established that "[w]hen interpreting statutes, we must read the statute, to the extent possible, so that no one part makes any other portion ineffective." *Hansen v. O'Reilly*, 62 V.I. 494, 514 (V.I. 2015) (quoting *Duggins v. People*, 56 V.I. 295, 302 (V.I. 2012)). As noted earlier, section 6(c) contains two clauses, the first of which unambiguously provides that those "charged with the duty of directing the administration of the electoral system . . . shall be appointed in such manner as the legislature may by law direct," with the second providing that "members of boards of elections, which entities of government have been duly organized and established by the government of the Virgin Islands, shall be popularly elected." 48 U.S.C. § 1572(c). Were this Court to interpret the second clause in the manner proffered by the members—that Congress intended to mandate continuity of the board system already in place at the time of the adoption of the Revised Organic Act—it would appear to render the first clause superfluous, since the Legislature would lack the authority to make any changes to the pre-existing system.[6]

Perhaps even more significantly, the language of section 6(c) does not support the

[6] In its May 10, 2018 findings of fact and conclusions of law, the Superior Court interpreted the first clause of section 6(c) as mandating the appointment of officers and employees of the electoral system, with the second clause mandating that board members be elected. However, the Superior Court cited to no authority to support its interpretation of the first clause, which would appear to eliminate the discretion of the Legislature to permit other electoral system officers—such as the Supervisor of Elections—from being popularly elected. In any event, it is not necessary to determine the full contours of the first clause of section 6(c) as part of this appeal, given that only the meaning of the second clause is necessary to a decision.

members' preferred interpretation. Section 6(c) uses the phrase "boards of election." Although two district boards may have existed at the time Congress enacted section 6(c), the language actually chosen by Congress does not limit the number of boards to only two—nothing precludes the Legislature from establishing three boards, or five boards, or even ten boards if it chose to do so. Had Congress intended to simply grandfather the two district boards that were in existence at the time, it could have used alternate phrases to make that intent clear, such as "the two boards of elections" or "the St. Croix Board of Elections and the St. Thomas-St. John Board of Elections." In fact, Congress had no difficulty mentioning other governmental entities that existed at the time of enactment of the Revised Organic Act by name when it found it appropriate to do so. *See, e.g.*, 48 U.S.C. § 1576 (noting that the Municipal Council of Saint Thomas and Saint John and the Municipal Council of Saint Croix would continue to function until January 10, 1955). Given these circumstances, it is well established that Congress's decision not to specify particular entities by name in section 6(c) is of consequence. *See Fish v. Kobach*, 840 F.3d 710, 740 (10th Cir. 2016) ("When Congress knows how to achieve a specific statutory effect, its failure to do so evinces an intent not to do so."); *Miller v. King*, 384 F.3d 1248, 1277 n.35 (11th Cir. 2004) ("Congress knows how to use specific language to identify which particular entities it seeks to regulate." (quoting Shotz v. City*of Plantation*, 344 F.3d 1161, 1164 (11th Cir. 2003)). *Compare, e.g.*, *Samuels, Kramer & Co. v. Commissioner*, 930 F.2d 975, 993 (2d Cir. 1991) ("Congress knows how to place the appointment power in a judicial body as opposed to a particular office.") with *Estrada-Espinoza v. Mukasey*, 546 F.3d 1147, 1156 (9th Cir. 2008) ("Congress knows how to define terms when it wants to give them specific definitions at odds with everyday understanding." (quoting *United States v. Young*, 458 F.3d 998, 1007 (9th Cir. 2006)).

Under these circumstances, the most reasonable interpretation of section 6(c) is that it

grants the Legislature the authority to determine how the officers and employees charged with implementing the election system are appointed, but with the exception that board members (whether there be a single board or multiple boards) be elected. This is consistent with the plain language of section 6(c), as well as the rules of construction codified by Congress in 1 U.S.C. § 1 and gives effect to both clauses of section 6(c) without rendering either clause ineffective. Therefore, we conclude that the Superior Court did not err when it held that Act Nos. 7892 and 7982 are not inconsistent with the Revised Organic Act to the extent they establish a single board of elections.[7]

C. Effect of Act No. 7982

The members, as an alternate ground for reversal, argue that the Superior Court erred when it held that Act No. 7982 dissolved the St. Croix Board of Elections and the St. Thomas-St. John Board of Elections. According to the members, Act No. 7982 does not preclude existence of district boards. To support this claim, the members note that Acts No. 7892 and 7982 did not expressly repeal all references to multiple boards in the Virgin Islands Code.[8] Although the Superior Court found that those references were nevertheless implicitly repealed, the members cite

[7] The members also argue, in a two-paragraph section of their brief, that Act No. 7982 failed to create a viable board because it is purportedly silent on which individuals will populate the single board. However, section 5 of Act No. 7982 expressly and unambiguously provides that "[b]y August 1, 2017, all members of the district boards of elections shall convene as a single board of elections, elect from among its members a chairman and a vice chairman, and establish procedures for the board's operations." Act No. 7982, § 5(a). Consequently, the Legislature clearly provided for the members of the St. Croix Board of Elections and St. Thomas-St. John Board of Elections to automatically become members of the single board.

[8] For example, Act No. 7892 does not expressly repeal or amend 18 V.I.C. § 47, which provides that "The boards of elections, within their respective election districts, have jurisdiction over the registration of electors and the conduct of primaries and elections. . . ."

to section 3 of Act No. 7982 as support for the proposition that the district boards may nevertheless exist. That provision provides, in its entirety, as follows:

> Notwithstanding section 1 of Act No. 7892 and, subject to section 5 of this act, the district boards of elections remain in operations (sic) and shall administer the requirements of title 18, chapter 3 of the Virgin Islands Code.

Act No. 7982, § 3.

The members' claim that section 3 of Act No. 7982 preserves the existence of the district boards is belied by the plain text of the enactment, and particularly the other statutory provisions which are expressly cross-referenced in section 3. Section 1(b) of Act No. 7892 amends 18 V.I.C. § 41 to strike all existing references to the district boards within that statute, and instead provide that "[t]here is a single Board of Elections governs both election districts." This cannot be interpreted as anything other than an explicit repeal of the provisions creating the district boards. While the members are correct that implicit repeal is generally disfavored, *see Samuel v. United Corp.*, 64 V.I. 512, 523 (V.I. 2016), this Court has repeatedly acknowledged the necessity of recognizing implicit repeal in instances where the Legislature establishes a new governmental entity to take the place of a prior entity but fails to meticulously amend every statutory reference. *See, e.g.*, *Murrell v. People*, 54 V.I. 338, 353-54 (V.I. 2010) (holding that Legislature implicitly repealed all statutory references to the District Court with respect to local civil matters when it divested the District Court of such jurisdiction and vested it in the Superior Court) (citing *Parrott v. Gov't of the V.I.*, 230 F.3d 615, 620-21 (3d Cir. 2000)). Although the better practice certainly would have been for the Legislature to correct every statutory reference to the boards, its failure to do so does not undo the explicit language of section 1(b) of Act No. 7892, which is to replace the district boards with a single board, rather than to have the single board co-exist alongside the

district boards.[9]

While section 3 of Act No. 7982 does provide for the district boards to remain in operation, it does so "subject to section 5 of this act." Section 5 of Act No. 7982 provides, in its entirety, as follows:

> **SECTION 5.**
> (a) By August 1, 2017, all members of the district boards of elections shall convene as a single board of elections, elect from among its members a chairman and a vice chairman, and establish procedures for the board's operations.
> (b) Notwithstanding any other statutory provision in title 18 to the contrary, the single Board of Elections shall assume and have jurisdiction, power, duties, and responsibilities that were exercised by the district boards and those powers, duties, and responsibilities of the Joint Board as are appropriately exercised by the single Board of Elections.
> (c) The single board shall be the only policymaking body and shall establish the procedures of its operations.

This language erases any doubt that the Legislature intended for the dissolution of the district boards. Section 5(a) mandates that the district boards convene as a single board by August 1, 2017. Section 5(b) refers to the powers "that were exercised by the district boards," and section 5(c) states that "[t]he single board shall be the only policymaking body." This language can only be interpreted as dissolving the district boards no later than August 1, 2017, with their jurisdiction, powers, duties, and responsibilities then transferring to the single board. To the extent section 3 provides for the district boards to remain in operation, the explicit cross-reference to section 5 makes it clear that those operations would only continue until August 1, 2017. Additionally, section 5(b), by expressly stating that the transfer of powers from the district boards to the single board must occur "[n]otwithstanding any other statutory provision in title 18 to the contrary,"

[9] In fact, having the newly-established single board co-exist with the district boards would render section 1 of Act No. 7892 a nullity, since under prior law the Joint Board of Elections co-existed with the St. Croix Board of Elections and the St. Thomas-St. John Board of Elections and consisted of the same members as those district boards.

eliminates any further doubt that the Legislature intends to repeal by implication 18 V.I.C. § 47 or any other statute that continues to reference the district boards notwithstanding the enactment of Act Nos. 7892 and 7982. Accordingly, the Superior Court committed no error when it held that Act No. 7982 dissolved the St. Croix Board of Elections and the St. Thomas-St. John Board of Elections and replaced them with a single board effective August 1, 2017.

D. Declaratory Judgment

Finally, the members argue that the Superior Court lacked the authority to grant the Government's request for a declaratory judgment because the Government sought relief for past acts.[10] However, the Virgin Islands declaratory judgment statute does not contain such a limitation. In fact, it expressly provides that "[a]ny person . . . whose rights, status or other legal relations are affected by a statute . . . may have determined any question of construction or validity arising under the . . . statute . . . and obtain a declaration of rights, status or other legal relations thereunder." 5 V.I.C. § 1262.

In its complaint, the Government sought a declaratory judgment "nullifying any and all decision made by district boards after August 1, 2017," and declaring that "the single Board of Elections is the only policymaking body that can establish the procedure for elections within the Virgin Islands." (Compl. 8-9.) This is precisely the type of relief contemplated by section 1262 of title 5 of the Virgin Islands Code, in that the Government expressly requested the Superior Court to both determine the status of the district boards of

[10] Although the pertinent section heading of the members' brief states that "The Superior Court erred when it granted the Government retrospective declaratory and injunctive relief," the members only provide substantive legal argument with respect to the grant of declaratory relief. Consequently, any claim that the Superior Court erred with respect to the grant of injunctive relief is waived. *See* V.I. R. APP. P. 22(m).

elections in light of Act Nos. 7892 and 7982, as well as the validity of the actions taken by the district boards after August 1, 2017. Thus, the Superior Court committed no error when it granted the Government's request for a declaratory judgment.

III. CONCLUSION

Act Nos. 7892 and 7982 are not inconsistent with section 6(c) of the Revised Organic Act, since Congress has directed that plural words in federal statutes also include the singular unless context requires otherwise. Moreover, Act No. 7982 cannot be reasonably interpreted to allow the St. Croix Board of Elections and St. Thomas-St. John Board of Elections to continue to co-exist along with the new single board of elections. And because the Government requested the Superior Court to determine the status of the district boards and the validity of the actions taken by them after August 1, 2017, the question was a proper one for a declaratory judgment. Accordingly, we affirm the Superior Court's May 10, 2018 judgment.

Dated this 8th day of June, 2018.

BY THE COURT:

/s/ Rhys S. Hodge
RHYS S. HODGE
Chief Justice

ATTEST:

VERONICA J. HANDY, ESQ.
Clerk of the Court