

A Suit by Unsuccessful Candidates to Overturn an Election

Picard Samuel v. Virgin Islands Joint Board of Elections
(*Curtis V. Gómez and Raymond L. Finch, D.V.I. 3:12-cv-94*)

Following a general election, unsuccessful candidates filed a pro se federal complaint to nullify the results and enjoin the swearing in of the winners. A district judge denied the plaintiffs a temporary restraining order. The plaintiffs sought reversal of the denial by recusal of the judge, also naming as a recusal ground the judge's sister's being a winning candidate in the election. The case was already reassigned to another judge for the sake of efficiency, and the second judge denied the plaintiffs a preliminary injunction because they could not show that the election irregularities of which they complained resulted in their defeats. Later, the second judge dismissed the complaint for lack of standing.

Subject: Voting irregularities. *Topics:* Enjoining certification; election errors; laches; pro se party; voting technology.

Five unsuccessful candidates for office in the November 6, 2012, general election filed a pro se federal complaint in the District of the Virgin Islands on December 11 to nullify election results and enjoin the swearing in of the victors because of various alleged election irregularities.¹ An amended complaint filed on December 21 included an application for a temporary restraining order.² On December 28, Judge Curtis V. Gómez denied the plaintiffs immediate relief.³

On January 2, 2013, the plaintiffs sought Judge Gómez's recusal on the grounds that his denying them relief was in error and his sister was a winner in the election.⁴ On January 2, however, Judge Gómez reassigned the case to Judge Raymond L. Finch to enable prompt consideration of the pending motion for a preliminary injunction.⁵

1. Complaint, *Picard Samuel v. V.I. Joint Bd. of Elections*, No. 3:12-cv-94 (D.V.I. Dec. 11, 2012), D.E. 1.

2. Amended Complaint, *id.* (Dec. 21, 2012), D.E. 33.

3. Amended Order, *id.* (Jan. 2, 2013), D.E. 69 (correcting a typographical error); Order, *id.* (Dec. 28, 2012), D.E. 51.

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

4. Motion, *Picard Samuel*, No. 3:12-cv-94 (D.V.I. Jan. 2, 2013), D.E. 68.

5. Docket Sheet, *id.* (Dec. 11, 2012) (D.E. 70); Recusal Opinion at 2–3, *id.* (Jan. 7, 2013), D.E. 80, 2013 WL 68633.

Judge Finch died on February 23, 2023. See Suzanne Carlson, *Judge Raymond Finch Remembered as Wise, Kind Mentor to Many*, V.I. Daily News, Feb. 25, 2023.

Following a January 4 hearing, Judge Finch denied the plaintiffs a preliminary injunction on January 6.⁶ He determined that he lacked jurisdiction to enjoin the swearing in of election victors, because welcoming new members of a legislature is a matter for the legislative branch of government, not the judicial.⁷ As for overturning the election results, the plaintiffs did not show that they would have been elected in the absence of the alleged election irregularities.⁸ Moreover, Judge Finch was averse to rewarding the plaintiffs' waiting until after the election to file their suit over matters that began to arise before the election.⁹

On January 7, Judge Gómez ruled that the recusal issue was moot and questioned the validity of the ground pertaining to his sister, who prevailed in a race that included none of the plaintiffs.¹⁰ More important, because the plaintiffs were not entitled to injunctive relief with respect to the election, there was no valid ground for recusal with respect to the judge's sister.¹¹

On March 7, Judge Finch dismissed the complaint for lack of standing; the plaintiffs' speculative claims of election irregularities did not show any injuries different from the general public's.¹² An appeal was dismissed for failure to prosecute it.¹³

6. Preliminary Injunction Denial Opinion, *Picard Samuel*, No. 3:12-cv-94 (D.V.I. Jan. 6, 2013), D.E. 76, 2013 WL 106686; Opinion, *id.* (Feb. 1, 2013), D.E. 87, 2013 WL 398666 (denying reconsideration); Order, *id.* (Feb. 4, 2013), D.E. 88 (denying as moot a motion to stay proceedings pending resolution of the motion for reconsideration).

7. Preliminary Injunction Denial Opinion, *supra* note 6, at 9–10.

8. *Id.* at 17.

9. *Id.* at 18–19.

10. Recusal Opinion, *supra* note 5, at 7–8.

11. *Id.* at 6–7.

12. Opinion at 9–11, *Picard Samuel v. V.I. Joint Bd. of Elections*, No. 3:12-cv-94 (D.V.I. Mar. 7, 2013), D.E. 92, 2013 WL 842946.

13. Order, *Picard Samuel v. V.I. Joint Bd. of Elections*, No. 13-2007 (3d Cir. Sept. 13, 2013).