THE UNITED STATES VIRGIN ISLANDS
DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL

October 28, 2015

Lilliana Belardo de O'Neal
St. Croix District Board Chairperson
Office of the Supervisor of Elections
P.O. Box 1499
Kingshill, St. Croix 00851

*Re: Letter dated July 6, 2015 Requesting Case Interpretation*

Dear Mrs. Belardo de O'Neal:

This letter is in response to your letter dated July 6, 2015, requesting an interpretation on two (2) cases: *Melchior v. Todman*, 296 F. Supp. 900 (D.V.I. 1968) and *Mapp v. Fawkes*, 61 V.I. 521 (V.I. 2014). I will address each case in turn.

***Melchior v. Todman***

The holding and reasoning in the *Melchior* case is no longer applicable to the Board of Elections given the amendments to the Virgin Islands Code. In *Melchior*, the plaintiff—a candidate for Senate running as an independent—sought injunctive relief regarding the application of 18 V.I.C.§ 584(c)(4). At that time, 18 V.I.C. § 584(c)(4) provided that when a voter marked their ballot in the "Party Column" and additionally voted for one or more individual candidates not of that party, the straight party vote should count and the other individual vote or votes should be disregarded. The specific situation the plaintiff raised concerns over was when a ballot was marked to show both a straight Democratic vote (indicating a vote for the six Democratic candidates) and a vote for one or more of the other candidates individually, since only six Senators residing in St. Thomas were to be elected. In that case, § 584(c)(4) essentially made a choice for the voter, requiring that their attempted vote for seven or more candidates be counted as a vote for the Democratic straight party ticket and disregard the other attempted vote for the other individual candidate or candidates whose name or names they had marked.

The plaintiff in *Melchior* argued that 18 V.I.C. § 584(c)(4) mandated arbitrary and discriminate action in violation of his equal protection rights. The District Court agreed and held that 18 V.I.C. § 584(c)(4) discriminated unlawfully against the independent candidate because the attempted votes for the plaintiff were being treated as inferior to a group vote for party nominees. A year later—in 1969—the Legislature repealed 18 V.I.C. § 584(c)(4). Therefore, the issue the District Court in *Melchior* addressed and decided is no longer relevant.

***Mapp v. Fawkes***

As you are well aware, last year the Virgin Islands Supreme Court published *Mapp v. Fawkes*, 61 V.I. 521 (V.I. 2014), which held that the Help America Vote Act ("HAVA"), codified as 42 U.S.C. § 15301 *et seq*., applies to the Virgin Islands. HAVA imposes significant requirements on state election systems and one such requirement is that voters must be afforded the opportunity to insert their ballots into the voting machines in order to be made aware of any overvotes or undervotes prior to casting their votes. 52 U.S.C. § 21081 (a) (1) (A). Thereby, the Supreme Court reversed a Superior Court order which held that Virgin Islands voters possessed no right to correct an overvote or undervote prior to casting their ballot. In so doing, the Supreme Court ordered that the Supervisor of Elections and each of the elections boards provide voters in the November 18, 2014 run-off election with the option to insert their ballot directly into the voting machines so that they may exercise their right under HAVA to be advised of any overvotes or undervotes.

Therefore, in future elections, the Board should verify that it is in compliance with all of HAVA's mandates. Specifically, the Board must allow voters to insert their ballots directly into the voting machines so that they may be advised of any overvotes or undervotes.

If you have any other questions regarding these or other cases, please contact Samuel Walker, Deputy Solicitor General.

Sincerely,

Claude Earl Walker, Esq.
Acting Attorney General