

Not For Publication.

IN THE SUPREME COURT OF THE VIRGIN ISLANDS

IN RE:) **S. Ct. Civ. No. 2017-0003**
) Re: Super. Ct. Civ. No. 734/2016 (STT)
KEVIN A. RODRIQUEZ,)
)
 Petitioner.)
_____)

On Petition for Permission to Appeal

Considered and Filed: January 4, 2017

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

ORDER OF THE COURT

PER CURIAM.

THIS MATTER is before the Court pursuant to a petition for permission to appeal filed by Kevin A. Rodriguez, which requests permission to appeal the Superior Court’s December 29, 2016 opinion and order denying his motion to dismiss. An appeal by permission should only be permitted when the Superior Court’s order “involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of litigation.” 4 V.I.C. § 33(c). However, even then, the decision to grant the appeal by permission is within the discretion of the Supreme Court.

This Court concludes that the issues identified in Rodriguez’s petition do not meet the standard elucidated in section 33(c). This Court has previously held that section 6(c) of the Revised Organic Act does not preclude judicial review of an individual’s eligibility to serve as a Senator due to a failure to meet the qualifications established in section 6(b). *Bryan v. Fawkes*, 61 V.I. 201, 216 (V.I. 2014) (citing *Legislature of the V.I. v. Mapp*, 24 V.I. 304, 305-07 (D.V.I. 1989)). Moreover, this Court has recognized that the Legislature has authorized individuals to

bring a private right of action to challenge the qualifications of an individual seeking public office. *See Haynes v. Ottley*, 61 V.I. 547, 567 (V.I. 2014); *see also* 5 V.I.C. § 80 (“A taxpayer may maintain an action to restrain illegal or unauthorized acts by a territorial officer or employee”); 5 V.I.C. § 1172 (authorizing an action by “a private person” against a person who “shall usurp, intrude into, or unlawfully hold or exercise any public office”). And while Rodriquez asserts that the durational residency requirement set forth in section 6(b) of the Revised Organic Act is unconstitutional under the Fourteenth Amendment, the United States Supreme Court has summarily affirmed durational residency requirements of five and seven years.¹ *See Sununu v. Stark*, 420 U.S. 958 (1975); *Kanapaux v. Ellisor*, 419 U.S. 891 (1974); *see also Lewis v. Guadagno*, 445 Fed.Appx. 599 (3d Cir. 2011) (four-year durational residency requirement does not violate the Fourteenth Amendment). Consequently, because all of issues raised by Rodriquez are resolved by binding precedent, this appeal does not “involve[] a controlling question of law as to which there is substantial ground for difference of opinion” so as to warrant an immediate appeal. 4 V.I.C. § 33(c). Accordingly, it is hereby

ORDERED that the petition for permission to appeal is **DENIED**; and it is further

ORDERED that copies of this Order shall be served on the parties.

SO ORDERED this 4th day of January, 2017.

ATTEST:
VERONICA J. HANDY, ESQ.
Clerk of the Court

Copies to: Justices of the Supreme Court
The Honorable Kathleen Y. Mackay, Superior Court Judge

¹ Moreover, since the Fourteenth Amendment is applicable to the Virgin Islands pursuant to section 3 of the Revised Organic Act, it is unclear whether section 6(b) of the Revised Organic Act is even amenable to a Fourteenth Amendment analysis.

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