

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

GEORGE MOORE, as candidate for the 30th
Legislature, COLLEEN CLARKE & VI ACTION GROUP,
INC., as registered voters.

PLAINTIFFS.

v.

JOHN ABRAMSON, JR. in his Official Capacity as the
Supervisor of Elections, RUPERT W. ROSS JR., in his
Official Capacity as Chairman of the St. Croix District
Board of Elections and Chairman of the Joint Board
of Elections, the ST. CROIX BOARD OF ELECTIONS, in
their OFFICIAL CAPACITY, and the JOINT BOARD OF
ELECTIONS.

DEFENDANTS.

CIV. SX-12 CV—0096

**ACTION FOR DECLARATORY AND
INJUNCTIVE RELIEF**

CLERK OF THE
DISTRICT COURT
ST. CROIX, V.I.

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COMPLAINT

Plaintiffs, seeking declaratory and injunctive relief against Defendants state the following:

1. This lawsuit is brought to preserve the integrity, consistency, equality, and finality of the rule of law in the United States Virgin Islands. It is brought reluctantly, because the election of a Senator is properly left to the people, not the courts. However, it is necessary because the current course threatens the equal application of the rule of law.
2. This is an action for declaratory and injunctive relief under the First and Fourteenth Amendments to the United States Constitution, Section 6(b) of the Revised Organic Act and 42 U.S.C § 1983. This action seeks the declaration that the conviction, for which

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Alicia "Chucky" Hansen was convicted of, is a crime involving moral turpitude, thereby disqualifying her to run for public office and an order requiring the Defendants to remove her name from the voting ballot.

3. Under Virgin Islands law, particularly Section 6(b) of the Revised Organic Act, Candidate for the Thirtieth Legislature Alicia "Chucky" Hansen is ineligible to sit on the legislature because of a conviction, for the willful failure to file a tax return, which the Plaintiffs posit comprises a crime involving moral turpitude.
4. This lawsuit seeks declaratory and injunctive relief seeking a declaration that Alicia "Chucky" Hansen's conviction is a crime involving moral turpitude and injunctive relief seeking the removal of her name from the current ballot and any ballot in the future.

PARTIES AND JURISDICTION

1. George Moore is an adult resident of St. Croix, US Virgin Islands and an Independent Citizens Movement (ICM) candidate for the 30th Legislature. Allowing an ineligible candidate to run for office will affect the votes that would be cast for him. He will be permanently and irreparably injured by allowing an ineligible candidate on the ballot.
2. Colleen Clarke is a registered voter and resident of St. Croix US Virgin Islands. Plaintiff Clarke will be permanently and irrevocably injured if an ineligible candidate is on the ballot. The right to vote is a "fundamental political right." *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886). This right is "denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise." *Reynolds v. Sims*, 377 U.S. 533, 554 (1964).
3. VI Action Group Inc. is a non-partisan, incorporated, non-profit, public interest organization with members who are all adults and reside in St. Croix, U.S. Virgin Islands. VI Action Group Inc. is dedicated to developing, educating, fostering, improving, and

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promoting civic interests, responsibilities, and rights of the public so that Government can work for all the residents of the Virgin Islands. Moreover, VI Action Group Inc. advocates for a fair, honest, responsive, and transparent government, educating and informing citizens about how politics and government affects their lives and empowering citizens by providing unbiased information. VI Action Group Inc.'s members are comprised of registered voters who would be permanently and irreparably injured if an ineligible candidate were on the ballot.

4. Defendant John Abramson, Jr. is an adult resident of St. Croix, U. S. Virgin Islands, who serves as the Supervisor of Elections. He has been the Supervisor of Elections for the past 18 years. He is responsible for the day-to-day administration of the Election System of the Virgin Islands. The Supervisor of Elections, pursuant to 18 V.I.C. §4, is appointed by the Joint Board of Elections for a term of eight years and can continue to serve at the pleasure of the Joint Boards. The Joint Boards for just cause can also remove the Supervisor of Elections. The Supervisor of Elections is subject to the direction, control, and supervision of the boards of elections. His duties include, but are not limited to certifying names of candidates for all public and territorial offices and membership on party committees to the boards of elections; receiving and determining the sufficiency of nomination petitions, certificates, and papers of candidates for all public and territorial offices and membership on party committees; determining which candidates have been nominated or elected; assisting and advising the boards of elections in the preparation and issuance of rules and regulations that are not inconsistent with law; and, preparing and distributing an official list of all candidates certified pursuant to 18 V.I.C. §420 with qualified electors of each district. Pursuant to 18 V.I.C. 411, the Supervisor of Elections or his Deputy can determine whether a candidate for election or nomination meets the qualifications established by law for the office.
5. Defendant Rupert W. Ross, Jr. (hereinafter referred to as Chairman Ross) is an adult resident of St. Croix, U.S. Virgin Islands, who serves as the Chairman of the St. Croix

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District and Joint Boards of Elections (both hereinafter referred to as boards of elections).

6. The boards of elections, pursuant to 18 V.I.C. §47, has jurisdiction over registration of electors and conducting elections. Their duties include, but are not limited to making and issuing rules, regulations and instructions that are not inconsistent with law; investigating election frauds, irregularities and violations and report suspicious circumstances to the VI Department of Justice for possible prosecution; and promulgating and issuing rules and regulations that are uniform for administration and enforcement of election laws throughout the US Virgin Islands.
7. This case arises under the Constitution and laws of the United States and presents a federal question within this Court's jurisdiction under Article III of the Constitution and 28 U.S.C. § 1331.
8. This Court has authority to grant declaratory relief pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201.
9. Venue is proper in this Court under 28 U.S.C. § 1391 (b).

FACTUAL ALLEGATIONS

10. On September 4, 2008, a Virgin Islands grand jury issued a Second Superseding Nine (9)-count indictment against Alicia "Chucky" Hansen. See Exhibit "A".
11. Count 1 charged that Alicia "Chucky" Hansen did willfully fail to make an income tax return to said Virgin Islands Bureau of Internal Revenue, reporting her gross income for tax year 2002, deductions and credits, as required by law, in violation of Title 33, Virgin Islands Code, Section 1524.

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12. Count 2 charged that Alicia "Chucky" Hansen did willfully fail to make an income tax return to said Virgin Islands Bureau of Internal Revenue, reporting her gross income for tax year 2003, deductions and credits, as required by Title 33, Virgin Islands Code, Section 1524.

13. Count 3 charged that Alicia "Chucky" Hansen did willfully fail to make an income tax return to the Virgin Islands Bureau of Internal Revenue, reporting her gross income for tax year 2004, deductions and credits, as required by Title 33, Virgin Islands Code, Section 1524.

14. Count 4, charged that Alicia "Chucky" Hansen willfully made and subscribed to an Income Tax Return, Form 1040, for tax year 2005, with attached schedules, which Form 1040 was verified by a written declaration that it was made under the penalties of perjury and was filed with the Virgin Islands Bureau of Internal Revenue, which said 2005 Form 1040 she did not believe to be true and correct as to every material matter in that the said Form 1040 omitted income and capital gain from the sale of investment property, to-wit: the sale of 24 A Estate St. John, St. Croix, U.S Virgin Islands, a residential rental property, for a sale price of \$220,000.00 with an approximate adjusted basis of \$108,334.00 resulting in an approximate taxable capital gain of \$111,666.00, which income and any capital gain from the sale of said investment property was required to be reported on the defendant's 2005 income tax return, Form 1040, and was not reported; in violation of Title 33, Virgin Islands Code, Section 1525(1).

15. Count 5 charged that Alicia "Chucky" Hansen did willfully fail to make an income tax return to the Virgin Islands Bureau of Internal Revenue, reporting her gross income for tax year 2006, deductions and credits, as required by Title 33, Virgin Islands Code, Section 1524.

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16. Count 6 charged that Alicia "Chucky" Hansen did knowingly and intentionally make false material declarations and did make and use a materially false declaration in a paper, document and record, to wit: a "Financial Affidavit in Support of Request for Attorney ... Without Payment of Fee", also known as a CJA Form 23, that is to say: the CJA form 23 filed by the defendant on or about April 2, 2004, was executed and filed with the District Court of the Virgin Islands in support of her request for the appointment of an attorney at Court expense in Criminal Number 2004-38. The Senator was accused of intentionally misrepresenting her net worth on said document. The Government claimed that she reported that the value of one property located at #2 Bellevue was worth \$250,000 when she knew it to be worth more than \$500,000. The Government further claimed in this count that she did not report another property that she owned. In violation of Title 18, United States Code, Section 1621.

 17. Count 7 charged Alicia "Chucky" Hansen with perjury in connection with her testimony in criminal case number 2004-38, where the Government alleged that she testified falsely, under oath. In violation of Title 18, United States Code, Section 1621.

 18. Count 8 charged Alicia "Chucky" Hansen with perjury for her testimony in criminal case number 2004-38.

 19. Count 9 charged Alicia "Chucky" Hansen with perjury for her testimony in criminal case 2004-38, where she was asked whether she employed three of her children in her Senatorial Office, she testified no. The Government alleged that when the defendant gave the foregoing answer she well knew that three of her children had been employed in her senatorial office. In violation of Title 18, United States Code, Section 1621.

 20. In or around late September and October 2008, the Government moved to dismiss on its own motion the perjury counts, which were counts 6-9. The Court granted this motion.

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21. Trial in this matter commenced on December 8, 2008 and concluded December 10, 2008.
22. At the conclusion of the trial, the jury found Alicia "Chucky" Hansen guilty on Count 1, Count 2 and Count 3. A not guilty verdict was reached on Count 5 and the jury did not reach a verdict on Count 4. The Government subsequently dismissed Count 4.
23. On June 10, 2009, Alicia "Chucky" Hansen was sentenced to a term of one-year incarceration on each count of willfull failure to file income tax returns, and the counts were to run consecutively. Further, the Court suspended Alicia "Chucky" Hansen sentence of incarceration, and placed her on one-year probation for each count to run consecutively, along with 600 community service hours.
24. On June 19, 2012, Alicia "Chucky" Hansen was discharged from her term of probation.
25. On or about August 16, 2012, Colleen Clarke, by letter to the Joint Boards of Elections, requested an "expedited formal hearing and investigation for the purpose of determining the qualifications and eligibility of Mrs. Alicia "Chucky" Hansen as a legitimate, or disqualifiable, Senatorial candidate for the 30th Legislature of the U.S. Virgin Islands".
26. On August 17 and 18, 2012, an administrative hearing was held by PERB hearing officer, Zandra E. Petersen, pursuant to 18 V.I.C. 411, in response to the letter presented by Colleen Clarke to the Joint Boards of Elections. Deputy Supervisor of Elections, James A. Weber III, called this hearing in the absence of the Supervisor of Elections. Defendant Ross testified that the St. Croix Board of Elections decided at a special Board meeting on December 22, 2011, that Alicia "Chucky" Hansen was not convicted of a felony. No

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mention was made as to whether the Board ruled on the question of whether the three underlying tax convictions constituted crimes involving moral turpitude.

27. On or about August 17, 2012, the Joint Boards of Elections, by letter to Mrs. Clarke from Rupert W. Ross, Jr., stated that the Joint Boards had no jurisdiction in determining the eligibility of a candidate and deferred to the Supervisor of Elections. See Exhibit "B".
28. In an Order issued by John Abramson, Jr., the Supervisor of Elections, dated August 31, 2012, Mr. Abramson found that the term moral turpitude was not defined in the Revised Organic Act or the Virgin Islands Code and refused to make an interpretation as to whether Alicia "Chucky" Hansen's conviction was a crime involving moral turpitude.
29. Defendant Abramson subsequently, publicly questioned whether he had the authority to interpret the meaning of the term Moral Turpitude.
30. In a letter dated October 25, 2011, Michael Springer, Jr. challenged the eligibility of Alicia "Chucky" Hansen to run based on her conviction.
31. The St. Croix District Board of Elections sought legal advice from the Attorney General of the Virgin Islands. See Exhibit "C".
32. Although the Attorney General indicated that the sole responsibility of the determination of Alicia "Chucky" Hansen's eligibility to sit as a current Senator is left to the Legislature, the Attorney also indicated:

"A conviction on three counts of failure to file required tax returns could be indicative of a pattern of dishonest conduct and/or personal gain, but an examination of the trial record would be necessary for a complete understanding of the factors involved in Senator Hansen's case. In the absence of a statutory definition of crimes of moral turpitude, it is the Courts, which must determine whether multiple convictions for failure to file tax returns are considered crimes of moral turpitude. The Board may use its

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rule making authority pursuant to section 47 of Title 18, Virgin Islands Code, to proffer a list of crimes, which the board believes, constitute crimes of moral turpitude for the purpose of qualification of an elector/voter. That rule would give notice and application to section 263. However the Courts will have to make the determination if that definition in the rule must also apply to section (6)(b) of the Revised Organic Act."

33. Title 33 of the Virgin Islands Code § 1544 is identical to its federal counterpart, and the federal statute relative to willfully failing to file income tax returns has been found to be a crime involving moral turpitude. Further, our courts have well established that because the local and federal statutes are identical, we must look to the federal statute for interpretation. See, *Government of the Virgin Islands v. Allen*, 251 F. Supp. 479 (D.Vi. 1966).
34. Many jurisdictions have determined moral turpitude and even applied it to the very same tax crimes Alicia "Chucky" Hansen has been convicted of :
- a. In *Re Bass*, 49 Ill. 2d 269, 272, 274 N.E.2d 6, 7 (Ill. 1971), which was a disciplinary proceeding brought against an attorney based on his conviction for willful failure to file a federal income tax return and to pay federal income taxes, the Illinois Supreme Court held that a conviction under the statute was "conclusive proof" that the attorney had been convicted of a crime involving moral turpitude.
 - b. In *Re Burrus*, 364 Mo. 22, 24, 258 S.W.2d 625, 626 (Mo. 1953), the Missouri Supreme Court said that it was quite clear that the attorney's intentional failure to file the income tax returns was conduct involving moral turpitude. In other cases, in Missouri it reached the same conclusion where an attorney's conviction for willfully and knowingly failing to file federal income tax returns was held to constitute a conviction for conduct involving moral turpitude. In disciplinary proceedings that questioned whether an attorney's conviction for having failed to file federal income tax returns was a conviction of a crime involving moral turpitude, in *Re Moon* 310 SW2d 935 (1958, Mo), the Missouri Supreme Court said that it was. Other cases are in *Re McMullin* 370 SW2d 151 (1963, Mo) (failure to file returns), in *Re Lurkins* 374 SW2d 67 (1964, Mo) (failure to file returns), and in *Re Kueter* 501 SW2d 486 (1973, MO) (failure to file return). It was held that an attorney's conviction for failing to file federal income tax returns over a 3-year period was evidence of conduct involving moral turpitude, in *Re MacLeod* 479 SW2d 443 (1972, Mo).
 - c. In a disciplinary proceeding brought against an attorney who was convicted for failing to file income tax returns it was held, without further discussion, that he had

- been convicted of an offense involving moral turpitude, in *Re Kline* 156 Mont 177, 477 P2d 881 (Mont. 1970).
- d. Where an attorney was convicted for having willfully and knowingly failed to file federal income tax returns, it was held that he had been convicted of a crime involving moral turpitude, in *State ex rel. Nebraska State Bar Assoc. v Fitzgerald* 165 Neb 212, 85 NW2d 323 (Neb. 1957). In the case of *State of Nebraska ex rel. NSBA v. Hahn*, 218 Neb. 508, 356 N.W.2d 885 (1984), the Court found that Mr. Hahn's failure to file federal income tax returns for three years was conduct involving moral turpitude. Likewise, in the case of *State of Nebraska ex rel. NSBA v. Duchek*, 224 Neb. 777, 401 N.W.2d 484 (1987), the Court found that Mr. Duchek's failure to file income tax returns was conduct involving moral turpitude.
 - e. An attorney's conviction for having failed to file a federal income tax return was apparently held to be a conviction of a crime involving moral turpitude, under the facts and circumstances of the case, in *Re Walker* 240 Or 65, 399 P2d 1015 (Or. 1965), although the specific facts and circumstances of the case were not revealed or discussed.
 - f. It was held that an attorney's conviction for willful and knowing failure to file income tax returns over a 4-year period involved moral turpitude, in *State Board of Law Examiners v Holland* 494 P2d 196 (Wyo. 1972).
 - g. Failure to file federal income tax return constituted illegal conduct involving moral turpitude and warranted suspension of attorney for 30 days. In *Re Brady* 412 NE2d 221 (Ind. 1980).
 - h. Where the courts have found moral turpitude, there has been a willful and knowing failure to file an income tax return with the Government. Because the facts show an inherent deceit and fraud on the part of the party, the crime has been found to be one involving moral turpitude. *Clark v. Alabama State Bar*, 547 So. 2d 461, 463 (Ala. 1989)
 - i. An attorney's conviction for willfully and knowingly failing to file federal income tax returns over a 3-year period comprised a crime of moral turpitude. *Dayton Bar Assoc. v Prear* 175 Ohio St 543, 26 Ohio Ops 2d 220, 196 NE2d 773 (Oh. 1964)
 - j. Where there exists pattern of repetitious non-filing of federal income tax returns for multiple years, and for which there were taxes due, such conduct is dishonest and involves moral turpitude. In *Re Nicholson* 257 SE2d 195 (1979, Ga.).
35. Section 6(b) of the Revised Organic Act of 1954 ("ROA") enumerates who is eligible to be a member of the Legislature of the Virgin Islands ("Legislature").

36. Any person who is not a qualified voter of the Virgin Islands or has been convicted of a crime involving moral turpitude is ineligible to be a member of the Legislature.
37. Alicia "Chucky" Hansen has been convicted of three counts of willfully failing to file income taxes and each conviction constitutes a crime involving moral turpitude.

COUNT I

(Violation of 42 U.S.C § 1983)

38. Plaintiff hereby incorporates Paragraphs 1 through 38 as if fully stated herein.
39. Alicia "Chucky" Hansen was convicted of three counts of willfull failure to file tax returns, a violation of 33 V.I.C. § 1524, which is a misdemeanor under Virgin Islands law.
40. 33 V.I.C. § 1524, provides:
- Whoever, being required by the internal revenue laws of the Virgin Islands to pay any tax, or required by this subtitle or the regulations issued under authority thereof, or by the Virgin Islands income tax law or the regulations issued under authority thereof, to make a return, keep any records, or supply any information, willfully fails to pay such tax, make such return, keep such records, or supply such information, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be fined not more hat \$10,000 or imprisoned not more than 1 year, or both, together with the costs of prosecution.
41. "Willfulness" has been defined by the courts as meaning "bad faith," "bad purpose," "evil motive," and "tax evasion motive." See, *United States v. Murdoch*, 290 U.S. 389 (1933).
42. In *Government of the Virgin Islands v. Allen*, 251 F.Supp. 479 (D.Vi. 1966), the Court held that in order for a jury to convict a defendant under 33 V.I.C. § 1524, the jury must find beyond a reasonable doubt that the defendant acted with a "bad purpose" as the term willfully implies. In other words, the "court must find beyond a reasonable doubt that

[a] person's failure to file was done with a bad purpose and without justifiable excuse."

Id.

43. The Plaintiffs posit that the crime for which Alicia "Chucky" Hansen was convicted of three times constitutes a crime involving moral turpitude; therefore, Alicia "Chucky" Hansen is under Section 6(b) of the Revised Organic Act, Alicia "Chucky" Hansen is ineligible to run for a seat on the 30th Legislature.
44. By empanelling an ineligible candidate on the ballot, Defendants, acting under the color of Virgin Islands law, have deprived the Plaintiffs of rights, privileges and immunities secured by the constitution and laws of the United States Virgin Islands, in violation of 42 U.S.C § 1983.
45. As a proximate cause of the Defendants actions, Plaintiffs will be permanently and irreparably harmed, and so would the public's trust and confidence in the democratic and electoral process.

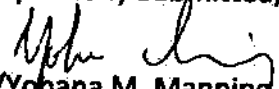
PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court enter judgment:

1. Declaring that the three tax convictions of Alicia "Chucky" Hansen are crimes involving moral turpitude.
2. Issuing an injunction requiring the Boards of Elections and/or the Supervisor of Elections to remove the name of Alicia "Chucky" Hansen from the Ballot for the 30th Legislature, and enjoining them from allowing her name to appear on any ballot;
3. Awarding Plaintiffs their reasonable attorneys' fee and costs in bringing this action;
4. Providing such other and further relief as the Court may deem just and proper.

DATED: September 19, 2012

Respectfully Submitted,


/s/Yohana M. Manning, Esq.

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