



**VIRGIN ISLANDS DEPARTMENT OF JUSTICE**  
**OFFICE OF THE ATTORNEY GENERAL**

May 18, 2026

Caroline F. Fawkes  
Supervisor of Elections  
P.O. Box 1499  
Kingshill, St. Croix, VI 00851

**Re: Legal Opinion Concerning Eligibility of Brett M. McClafferty to be a Candidate for the Legislature of the U.S. Virgin Islands**

Dear Supervisor Fawkes:

The Office of the Attorney General is in receipt of your April 21, 2026 letter requesting a legal opinion relating to the eligibility of Brett M. McClafferty to run as a candidate for the U.S. Virgin Islands Legislature (the "Legislature"). After confirming the facts of McClafferty's criminal history and reviewing the applicable laws, the Virgin Islands Department of Justice offers the following opinion.

**BACKGROUND**

On April 14, 2026, McClafferty obtained a nomination package from your office to qualify as a candidate for the Legislature. On April 16, 2026, you received a letter of the same date (the "April 16 Letter"), in which the author asserted that he and his firm represented McClafferty "regarding Mr. McClafferty's position on his compliance with the Revised Organic Act" eligibility requirements for candidates to serve in the Legislature.

The April 16 Letter made vague representations about McClafferty's criminal history, implying that any felony convictions had since been reversed on appeal and had ultimately been resolved by McClafferty pleading guilty to several misdemeanor violations of the Ohio Consumer Sales Practices Act. The April 16 Letter appears to concede that McClafferty has not received a pardon.

The April 16 Letter also argued that these convictions did not render him ineligible despite the Revised Organic Act's § 6(b), which states that "[n]o person shall be eligible to be a member of the legislature... who has been convicted of a felony or of a crime involving

---

**St. Thomas**

3438 Kronprindsens Gade | GERS Complex, 2nd Floor | St. Thomas, VI 00802-5749 | (340) 774-5666  
Division of Paternity & Child Support | 8000 Nisky Shopping Center | 2nd Floor, Suite 500 | St. Thomas, VI 00802 | (340) 775-3070

**St. Croix**

213 Estate La Reine | Kingshill, St. Croix, VI 00850 | (340) 773-0295  
Division of Paternity & Child Support | 3018 Orange Grove, Suite 4 | Christianssted, St. Croix, VI 00821 | (340) 775-3070

Letter to Caroline F. Fawkes, Supervisor of Elections

Re: Legal Opinion Concerning the Eligibility of Brett M. McClafferty to be a Candidate for the Legislature of the U.S. Virgin Islands

May 18, 2026

Page 2

moral turpitude and has not received a pardon restoring his civil rights." The April 16 Letter makes four arguments that McClafferty remains eligible despite his criminal history. First, the April 16 Letter argues that McClafferty's criminal convictions do not include disqualifying crimes of moral turpitude. Second, it argues that pardon of the Ohio convictions is not necessary. Third, it argues that only crimes committed in the Virgin Islands are disqualifying. Fourth, it argues that the Revised Organic Act's prohibition unconstitutionally discriminates against potential candidates for territorial office.

## DISCUSSION

### I. McClafferty has a criminal history of several convictions in Ohio.

Based on the records we have collected, McClafferty appears to have been convicted of ten felonies, including but not limited to Identity Fraud and Forgery. He also appears to have been convicted of five misdemeanors, including Passing Bad Checks and Theft.

On November 25, 2015, in *State v. McClafferty*, Case No. CR-15-598611-A, Cuyahoga County (Ohio) Court of Common Pleas, McClafferty pled guilty to a misdemeanor, Passing Bad Checks in violation of O.R.C. § 2913.11(B). Journal Entry dated 11/25/15, attached hereto as Exhibit A.

On February 11, 2016, in *State v. McClafferty*, Case No. CR 2014 12 3693, Summit County (Ohio) Court of Common Pleas, McClafferty pled guilty to two counts of a misdemeanor, Theft in violation of O.R.C. § 2913.02(A)(3)/(1). Journal Entry dated 2/11/16, attached hereto as Exhibit B.

On August 9, 2016, in *State v. McClafferty*, Case No. 15 C 000185, Geauga County (Ohio) Court of Common Pleas, McClafferty pled guilty to a felony of the fourth degree, Passing Bad Checks in violation of O.R.C. § 2913.11(B). Judgment of Conviction dated 8/9/16, attached hereto as Exhibit C. McClafferty later appealed that court's denial of his motion for additional jail-time credit. *State v. McClafferty*, 2020-Ohio-3238 (Oh. App. Ct. 2020), attached hereto as Exhibit D. McClafferty's appeal was determined to be without merit. *Id.*, ¶ 54. The appeal did not vacate the underlying conviction. *See id.*, ¶ 55 (affirming the Judgment of Conviction).

On April 2, 2018, in *State v. McClafferty*, Case No. 2017 CR 1115, Portage County (Ohio) Court of Common Pleas, having been found guilty by a jury, McClafferty was sentenced on two counts of a felony of the fifth degree, Forgery in violation of O.R.C. § 2913.31, a

Letter to Caroline F. Fawkes, Supervisor of Elections

Re: Legal Opinion Concerning the Eligibility of Brett M. McClafferty to be a Candidate for the Legislature of the U.S. Virgin Islands

May 18, 2026

Page 3

misdemeanor, Theft, and a felony of the fifth degree, Theft.<sup>1</sup> Order and Journal Entry dated April 2, 2018, attached hereto as Exhibit E.

On November 27, 2018, in *State v. McClafferty*, Case No. 2018-CR-88, Trumbull County (Ohio) Court of Common Pleas, McClafferty pled guilty to a felony of the fifth degree, Passing Bad Checks in violation of O.R.C. § 2913.11(B) & (F), and a misdemeanor, Petty Theft in violation of O.R.C. § 2913.02(A)(3) & (B)(1)(2). Entry on Sentence dated 11/27/18, attached hereto as Exhibit F.

On February 21, 2019, in *State v. McClafferty*, Case No. CR-2017-06-2218, Summit County (Ohio) Court of Common Pleas, McClafferty pled guilty to a felony of the fifth degree, Possession of Cocaine in violation of O.R.C. § 2925.11(A) & (C)(4). Journal Entry dated 3/13/19, attached hereto as Exhibit G. McClafferty later appealed a journal entry entered by that court after sentencing. *State v. McClafferty*, 2020-Ohio-6857 (Ohio App. Ct. 2020), attached hereto as Exhibit H. McClafferty prevailed on the appeal, but the appeal did not address or vacate the underlying conviction. *See id.*, ¶¶ 5-8.

On February 21, 2019, in *State v. McClafferty*, Case No. CR-2017-11-3865, Summit County (Ohio) Court of Common Pleas, McClafferty pled guilty to a felony of the fourth degree, Grand Theft in violation of O.R.C. § 2913.02(A)(3), and a felony of the third degree, Identity Fraud, in violation of O.R.C. § 2913.49(B)(2). Journal Entry dated 3/13/19, attached hereto as Exhibit I. McClafferty later appealed a journal entry entered by that court after sentencing. Exhibit H. McClafferty prevailed on the appeal, but the appeal did not address or vacate the underlying conviction. *Id.*

On May 21, 2019, in *State v. McClafferty*, Case No. 2017 CR 0775, Portage County (Ohio) Court of Common Pleas, McClafferty pled guilty to a felony of the fourth degree, Identify Fraud in violation of O.R.C. § 2913.49(E). Judgment Entry dated May 22, 2019, attached hereto as Exhibit J. In this matter, the State appealed the trial court's grant of a motion to suppress evidence, with the Court of Appeals reversing the trial court and remanding. Opinion dated 11/19/18 in *State v. McClafferty*, Case No. 2018-P-0013, attached hereto as Exhibit K. The State's appeal was decided before the May 21, 2019 conviction, so the appeal does not affect the conviction, which remains in place. *See, generally, id.*

On June 3, 2019, in *State v. McClafferty*, Case No. CR-17-613602-A, Cuyahoga County (Ohio) Court of Common Pleas, McClafferty pled guilty to a felony of the fourth degree, Grand Theft in violation of 2913.02(A)(3). Journal Entry dated 6/3/19, attached hereto as Exhibit L.

---

<sup>1</sup> The Order and Journal Entry do not specify the code section for the theft counts, but both counts are presumably violations of O.R.C. § 2913.02(A).

Letter to Caroline F. Fawkes, Supervisor of Elections

Re: Legal Opinion Concerning the Eligibility of Brett M. McClafferty to be a Candidate for the Legislature of the U.S. Virgin Islands

May 18, 2026

Page 4

Under Ohio law, a felony of the third degree may generally<sup>2</sup> result in a sentence of incarceration of nine to thirty-six months. O.R.C. § 2929.14(A)(3). A felony of the fourth degree may generally result in a sentence of incarceration of six to eighteen months. O.R.C. § 2929.14(A)(4). A felony of the fifth degree may generally result in a sentence of incarceration of six to twelve months. O.R.C. § 2929.14(A)(5).

No record we have identified suggests that McClafferty has been pardoned of any of the above convictions.

**II. McClafferty's criminal history renders him ineligible to run for the Legislature.**

**A. McClafferty has been convicted of felonies and crimes of moral turpitude.**

In relevant part, the Revised Organic Act provides that "No person shall be eligible to be a member of the legislature... who has been convicted of a felony or of a crime involving moral turpitude and has not received a pardon restoring his civil rights." Revised Organic Act, § 6(b).

Here, the records reflect that McClafferty has been convicted of ten felonies. Of note, under Virgin Islands law, "a felony is a crime or offense which is punishable by imprisonment for more than one year." 14 V.I.C. §2. In Ohio, felonies of the fifth degree are not generally punishable by imprisonment for more than one year. O.R.C. § 2929.14(A)(5). As a result, it could potentially be argued that for purposes of the Revised Organic Act disqualification of unpardoned felons, felonies of the fifth degree are immaterial. Virgin Islands courts do not appear to have addressed this issue, although there is authority that in like circumstances the law of the jurisdiction rendering the conviction controls. *See Violet v. Voccola*, 497 A.2d 709, 712 (R.I. 1985) ("[W]e must look to the law of the jurisdiction in which the conviction took place in order to determine whether the crime is a felony or a misdemeanor."). This would mean that all the convictions that Ohio designated felonies would also be considered felonies for purposes of § 6(b). We need not resolve the issue, however, because five of the felony convictions are of the third and fourth degree, punishable under Ohio law by imprisonment for more than one year and therefore undeniably felonies under Virgin Islands law.

Further, several of the crimes appear to be crimes of moral turpitude. The term "crimes of moral turpitude" is not defined by the Revised Organic Act or in the Virgin Islands Code. *Bryan v. Fawkes*, 61 V.I. 201, 229 (V.I. 2014). While our Virgin Islands Supreme Court has not provided an exhaustive definition, it has held that crimes of moral turpitude, "at the very least... encompass all crimes "in which fraud is an ingredient." *Id.* at 233-34. The Court held further that even if intent to defraud is not a formal element of the offense, "a crime

---

<sup>2</sup> Ohio Revised Code § 2929.14 provides for the imposition of a longer term of incarceration in the event of certain aggravating factors.

*Letter to Caroline F. Fawkes, Supervisor of Elections*

*Re: Legal Opinion Concerning the Eligibility of Brett M. McClafferty to be a Candidate for the Legislature of the U.S. Virgin Islands*

*May 18, 2026*

*Page 5*

nevertheless may involve moral turpitude if such intent is implicit in the nature of the crime." *Id.* at 234.

The offenses of Passing Bad Checks in violation of O.R.C. § 2913.11, Forgery in violation of O.R.C. § 2913.31, and Identity Fraud in violation of O.R.C. § 2913.49 all include an intent to defraud as an element of the offense. In addition, Theft in violation of O.R.C. § 2913.02(A)(3), which is the offense of theft by deception, likely also constitutes a crime of moral turpitude. The offense under Ohio law requires a showing that a defendant "with purpose to deprive the owner of property or services" uses deception to obtain such property or services. O.R.C. § 2913.02. The fraudulent intent appears "implicit in the nature of the crime," *Bryan*, 61 V.I. at 234, and therefore constitutes a further crime of moral turpitude.

In sum, McClafferty's criminal history reflects at least twelve disqualifying convictions: his November 25, 2015 conviction for misdemeanor Passing Bad Checks; his February 11, 2016 convictions for two counts of misdemeanor Theft (by deception); his August 9, 2016 conviction for felony Passing Bad Checks; his April 2, 2018 convictions for two counts of Forgery; his November 27, 2018 convictions for felony Passing Bad Checks and misdemeanor Petty Theft (by deception); his February 21, 2019 convictions for felony Grand Theft (by deception) and felony Identity Fraud; his May 21, 2019 conviction for felony Identity Fraud; and his June 3, 2019 conviction for felony Grand Theft (by deception). It is also possible that his April 2, 2018 convictions for felony Theft and misdemeanor Theft constitute disqualifying convictions. Even though the felony Theft was not punishable by incarceration for more than one year, it likely still constitutes a felony for purposes of § 6(b) eligibility, and the potential facts of both of these two Theft convictions may, on further investigation, reveal them to be crimes where a fraudulent intent appears "implicit in the nature of the crime" such that they too constitute crimes of moral turpitude.

**B. Notwithstanding O.R.C. § 2967.16, a pardon of all felonies and crimes of moral turpitude is required before McClafferty would be eligible to serve in the Legislature.**

The April 16 Letter argues that a pardon is not necessary for the restoration of civil rights after Ohio convictions and that no pardon should be necessary here. The argument appears to be based on the Revised Organic Act language that restores eligibility for the Legislature to those persons who have "received a pardon restoring [their] civil rights." Revised Organic Act, § 6(b). The April 16 Letter asserts that O.R.C. § 2967.16 "restores rights to felons, with limited and inapplicable exceptions, upon completion of their sentence."

The April 16 Letter misinterprets § 6(b)'s pardon requirement. When interpreting a statute, "[t]he first step... is to determine whether the language at issue has a plain and unambiguous meaning. If the statutory language is unambiguous and the statutory scheme is coherent and consistent, no further inquiry is needed." *Faustin v. People*, 2024 VI

Letter to Caroline F. Fawkes, Supervisor of Elections

Re: Legal Opinion Concerning the Eligibility of Brett M. McClafferty to be a Candidate for the Legislature of the U.S. Virgin Islands

May 18, 2026

Page 6

23, ¶ 25 n.5 (V.I. 2024) (citations and internal quotation marks omitted). For a potential candidate for the Legislature to regain eligibility, § 6(b) by its plain terms requires "a pardon restoring his civil rights." McClafferty does not have a pardon. Moreover, the argument is disingenuous given that McClafferty's convictions involving fraud, deceit, and theft also prevent him from holding state or local office in Ohio. See O.R.C. § 2961.02. McClafferty remains bound by the requirements of § 6(b).

**C. It is immaterial that the convictions were not rendered in Virgin Islands courts.**

The April 16 Letter suggests that the Revised Organic Act intended to refer only to convictions rendered by Virgin Islands courts, but the language is unambiguous and contains no such qualification. See *Faustin*, 2024 VI 23, ¶ 25 n.5 ("If the statutory language is unambiguous... no further inquiry is needed."). Further, "it is axiomatic that where we can determine the intent of the Legislature in enacting a statute, we are required to read the statute to carry out that legislative intent." *DaCosta v. DaCosta*, 74 V.I. 640, 645 (V.I. 2021) (quoting *Duggins v. People*, 56 V.I. 295, 304 (V.I. 2012)). There is no reason to believe that Congress intended to permit felons and those otherwise convicted of crimes of moral turpitude to serve in the Virgin Islands Legislature so long as those convictions arose from criminal conduct in other parts of the United States. McClafferty remains bound by the requirements of § 6(b).

**D. Section 6(b) does not unconstitutionally discriminate against felons and those convicted of crimes of moral turpitude.**

The April 16 Letter suggests that § 6(b) may be unconstitutional in discriminating against felons and those convicted of crimes of moral turpitude. This claim appears meritless. Regardless, the Revised Organic Act, including § 6(b), remains the law absent some further action by the U.S. Congress or the courts. McClafferty remains bound by the requirements of § 6(b).

**CONCLUSION**

I trust that the above analysis answers your questions. If additional assistance on specific provisions or situations is needed, please let us know,

Sincerely,



Gordon C. Rhea, Esq.  
Attorney General

*Letter to Caroline F. Fawkes, Supervisor of Elections*

*Re: Legal Opinion Concerning the Eligibility of Brett M. McClafferty to be a Candidate for the  
Legislature of the U.S. Virgin Islands*

*May 18, 2026*

*Page 7*