

**IN THE EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA**

**IN THE HIGH COURT OF JUSTICE
(CIVIL DIVISION)**

CLAIM NO.: ANUHCV 2026/0139

IN THE MATTER REPRESENTATION OF THE PEOPLE ACT CAP. 379

AND

**IN THE MATTER OF A PARLIAMENTARY ELECTION FOR THE CONSTITUENCY OF
ST. PHILLIP NORTH HELD ON 16TH MARCH, 2026**

BETWEEN:

GEORGE WEHNER

Petitioner

and

RANDY BALTIMORE

Respondent

Appearances:

Mr. Sherfield Bowen, Counsel for the Petitioner

Ms. Samantha Marshall and with her, Talia DaCosta, Counsel for the Respondent

Ms. E. Patricia Simon Forde, Counsel for the Electoral Commission

2026: March 26th, 27th.

RULING
(Application for an Interim Injunction)

Introduction

[1] **WILLIAMS, J.:** This is an application for an interim injunction seeking the following:-

1. An Order restraining the Respondent from taking the oath of allegiance and/or assuming, occupying or performing the functions of the House of Representatives for the Constituency of St. Phillip North, until the determination of the Election Petition herein or further Order of this Honourable Court.

2. Such further and other directions as this Court deems appropriate; and

3. The provisions be made for the cost of this Application.

[2] The application is made in the context of an election petition filed on 20th March, 2026 which challenges the validity of the Respondent's election as Member of Parliament for the St. Phillip North Constituency. This is on the basis that he was allegedly disqualified from being elected by reason of being a public officer on nomination day.

[3] The grounds of application are as follows:-

1. There is a serious issue to be tried, namely whether the Respondent was, at the time of his nomination on 25th February 2026, a public officer and thereby constitutionally disqualified from being elected to the House of Representatives pursuant to section 39(1)(g) of the Constitution of Antigua and Barbuda and section 10(1) of the Civil Service Act.
2. The Petition raises substantial and bona fide questions as to the Respondent's eligibility and qualification for election, which are neither frivolous nor vexatious.
3. Damages would not be an adequate remedy, as the matters in issue concern the constitutional validity of the Respondent's election, the integrity of the electoral process, and the Petitioner's fundamental constitutional right as an elector to a lawful and valid election outcome.
4. If the Respondent is permitted to take the Oath of Allegiance and assume office, and is subsequently found to have been disqualified, this would undermine the supremacy of the Constitution, create irreversible constitutional and institutional consequences, and render the relief sought in the Petition nugatory or of diminished practical effect.
5. The balance of convenience overwhelmingly favours the grant of the injunction, in that the restraint sought is temporary and preservative in nature, the prejudice to the Respondent is limited to a deferral of his assumption of office, and the prejudice to the Petitioner and the

public, if the injunction is refused, would be substantial and irreparable.

6. It is in the public interest that only persons who are constitutionally qualified are permitted to sit in the House of Representatives, and that the Court preserves the status quo pending determination of serious constitutional questions.
7. The Constitution, being the supreme law, must be upheld, and the Court is obliged to prevent any prima facie unconstitutional occupation of public office.
8. It is just and equitable in all the circumstances.

Factual Background

- [4] On 25th February, 2026 the Respondent was nominated as a candidate to contest a by-election in the St. Phillip North Constituency.
- [5] The by-election was held on 16th March, 2026 and the Respondent was returned as the elected candidate.
- [6] The Respondent was employed as a customs officer in the public service. By letter dated 18th February, 2026 he purported to tender his resignation with effect from 20th February, 2026.
- [7] The Petitioner contends that the resignation was ineffective because it did not comply with the notice requirements applicable to civil servants on the permanent establishment namely three months' notice.¹ This is supported by correspondence from the Public Service Commission indicating that the Respondent's employment was terminated on 9th March, 2026. This was ostensibly due to the Respondent having not given the requisite notice as required by the Civil Service Regulations.
- [8] It is therefore alleged that the Respondent remained a public officer on nomination day and was thus disqualified by virtue **of section 39(1)(g) of the Constitution. Section 39(1)(g) of the Constitution** will be quoted later in this ruling.
- [9] In his affidavit in response to the application filed on 25th March, 2026. The Respondent maintains that he unequivocally resigned prior to nomination day. He outlines that he ceased attending work and received salary only up to 19th February, 2026. He also exhibits correspondence from the Chief Establishment Officer dated 23rd March, 2026 which suggests that the Public Service Commission terminated the Respondent's employment with effect from 20th February, 2026. The

¹ Public Service Regulations Regulation 28(1)

Respondent further contends that any failure to give the prescribed notice could not operate to compel him to remain in public employment.

- [10] The Parties therefore join issue on the legal effect of the Respondent's resignation and his employment status at the date of nomination.

Jurisdiction

- [11] **Sections 43 and 46 of the Representation of the People Act²** provide that the validity of an election may be questioned only by election petition before the High Court sitting as an Election Court. The Election Court possesses the same powers as a judge of the High Court. This Court accordingly has jurisdiction to entertain interlocutory applications arising in the course of election petition proceedings.

Applicable Principles

- [12] The principles governing the grant of interim injunctions are long established by the well-known case of **American Cyanamid v. Ethicon Ltd.**³ The Court must consider:-

1. Whether there is a serious issue to be tried;
2. Whether damages would be an adequate remedy;
3. Where does the balance of convenience lie.

Serious Issue to be Tried

- [13] The Court is satisfied that the petition raises a serious issue to be tried. **Section 39(1)(g) of the Constitution of Antigua and Barbuda provides** as follows:-

“No person shall be qualified to be elected as a member of the House who- (g) holds or is acting in any public office or in the office of judge of the Supreme Court or Ombudsman or is a member of the Constituencies Boundaries Commission, the Judicial and Legal Services Commission, the Public Service Commission or the Police Service Commission;”

² Cap. 379

³ [1975] AC 396

- [14] Thus, the legal effect of the Respondent's resignation and whether he remained a public officer on nomination day are matters involving contested questions of law and fact that must be determined at trial.

Adequacy of Damages

- [15] The Parties agree and the Court accepts that constitutional eligibility to sit in Parliament is not a matter readily compensable in damages.

Balance of Convenience

- [16] The balance of convenience will not be examined. In **National Commercial Bank v. Olint**⁴ the Privy Council stated as follows: -

"It is often said that the purpose of an interlocutory injunction is to preserve the status quo, but it is of course impossible to stop the world pending trial. The court may order a defendant to do something or not to do something else, but such restrictions on the defendant's freedom of action will have consequences, for him and for others, which a court has to take into account. The purpose of such an injunction is to improve the chances of the court being able to do justice after a determination of the merits at the trial."

- [17] In the context of election petitions Justice Forrester (Ag.) examined the issue of the balance of convenience in the case of **Casworth Aaron v. Kelvin Simon**.⁵ In that case the Respondent candidate had been a public officer who only resigned from the civil service after nomination day but before the 2023 General Election. His return was challenged by an elector in the constituency who also sought interim relief to prevent him from being sworn in.

- [18] In that case, Justice Forrester similarly found that there was a serious issue to be tried and that damages would not be adequate. At paragraph 40 of the decision the Learned Judge stated:-

"This Court views upholding the decision of the public to elect the Respondent as its member to the House as being of great public importance and greater than the private interest of the Petitioner. In fact, the Petitioner has presented no evidence of any prejudice that would be sustained by him if such is not done. The Petitioner's submissions have centred around whether the Court may be facilitating an illegal act by allowing the Respondent to take the oath but the Petitioner disregards the presumption

⁴ [2009] UKPC 16 at paragraph 16

⁵ ANUHCV2023/0012 decided 14th February 2023 (unreported)

of validity that is afforded to the Respondent prior to the Court's determination of the disqualification status of the Respondent on the Election Petition. In fact, there were no arguments that the Respondent was not duly qualified based on Section 38 of the Constitution, to be a member of the House. In relation to whether the Respondent is disqualified from being a member, there are additional facts not before the Court on this application such as the evidence of the decision of the Public Service Commission as to the terms and conditions on which the Respondent's resignation took effect which is within the sole discretion of the Public Service Commission to decide, amongst other matters, that have to be presented to resolve the issues arising on the Petition which will in turn inform the findings of law that would eventually be made on the Petition."

[19] Similarly in this case although there is evidence from the Public Service Commission before the Court, there is also conflicting evidence from the Respondent. There is also the central issue of law as to whether the Respondent's letter of resignation was effective. These determinations can only be made after trial.

[20] At paragraph 41 of the decision in Casworth Aaron v. Kelvin Simon the learned judge further observed:-

"Having regard to the circumstances of this matter at this stage, this Court finds that there is no overwhelming evidence to lean the balance of convenience in favour of the Petitioner to restrain the Respondent from taking the oath of the House. At present, the Respondent is presumed to have been validly elected and the status of his disqualification will be for determination at trial and he should be permitted to carry on with the business of the people pending trial."

[21] The Court determined that the grant of injunctive relief would impermissibly undermine the will of the electorate by depriving the constituency of its duly chosen representative and thereby impairing the constituency's representation in the House of Representatives. The Court further observed that, in the event the Petition ultimately succeeds, adequate constitutional mechanisms exist to remove the Respondent from office and to address any attendant consequences, including the potential invocation of section 45 by the Director of Public Prosecutions. In the absence of any submission that the Respondent's interim participation would render the proceedings of the House invalid or susceptible to challenge, the Court concluded that the balance of convenience decisively favoured permitting the

Respondent to continue to sit and discharge his functions pending the final determination of the Petition.⁶

- [22] At the hearing, Counsel for the Petitioner was questioned as to how the present matter differed from the Casworth Aaron case. Learned Counsel pointed out that in this case there was correspondence from the Public Service Commission which indicated that the Respondent had been terminated with effect from 9th March, 2026 which was of course after nomination day. This he submits, is conclusive proof that the Respondent was a public officer at all material times.
- [23] The Court accepts that this factual distinction exists. However, as previously noted, the court cannot treat the Commission's correspondence as decisive at this stage of the proceedings. Further, the present case raises a more nuanced question concerning the legal efficacy of a resignation allegedly tendered prior to nomination. Thus, the Court finds that there is no compelling reason to depart from the approach taken by the court in the Casworth Aaron matter.

Status Quo

- [24] The Petitioner has strenuously argued that an injunction is necessary to maintain the status quo. However, the status quo is not merely that the Respondent has not yet taken the oath. The relevant status quo is the fact that the Respondent has been duly returned as the elected representative of the constituency. Granting an injunction would alter this by preventing a returned candidate from performing the functions ordinarily attendant upon election.
- [25] The Petitioner submits that permitting the Respondent to sit in Parliament may result in unconstitutional participation if the Petition ultimately succeeds. The Constitution is the Supreme Law of Antigua and Barbuda and must therefore be respected. The Court therefore accepts that this is a valid concern. However, at this stage of the proceedings a breach of the Constitution has not been established.
- [26] The refusal of interim relief in this instance will not render the Court's final remedies ineffective. If the election is ultimately declared void, the Court retains power to grant consequential relief affecting the Respondent's elected status. The Court also considers that any risk of prejudice can be mitigated by expediting the Petition.
- [27] The proper role of the Election Court is to determine whether a person has been validly elected. It is not ordinarily to determine, at an interlocutory stage, whether a

⁶ ANUHCv2023/0012 decided 14th February 2023 (unreported) at paragraphs 42 and 43

duly returned candidate should be prevented from participating in parliamentary processes pending that determination.

[28] In summary, granting the injunction would:-

1. Effectively determine the practical consequences of the petition in advance of trial;
2. Deprive the constituency of parliamentary representation during the pendency of the proceedings;
3. Constitute a substantial interference with parliamentary functioning.

[29] In these circumstances the Court concludes that the balance of convenience favours refusing the application for an interim injunction.

Order

[30] The Court therefore orders as follows:-

1. The Petitioner's application for an interim injunction is refused.
2. Costs of \$1,000.00 to be paid by Petitioner to the Respondent within twenty-one (21) days of this Order.
3. The Respondent shall file an affidavit in response to the substantive election petition by 2nd April, 2026.
4. The Petitioner may file an affidavit in reply by 8th April, 2026.
5. The matter is adjourned to 13th April, 2026 at 9:00 a.m. for hearing via zoom where expedited case management directions shall be issued.
6. The Petitioner shall have carriage of this Order.

Rene Williams
High Court Judge

By The Court

Registrar