

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION**

REFORM PARTY OF THE UNITED
STATES OF AMERICA,

Plaintiff,

v.

CASE NO. 4:05cv426-RH/WCS

SHAWN O'HARA et al.,

Defendants.

_____ /

**ORDER DENYING MOTIONS FOR
JUDGMENT AS A MATTER OF LAW**

The central dispute in this service mark infringement action is control of the Reform Party of the United States. The jury returned its verdict resolving that dispute in favor of defendants. This order denies plaintiff's motion for judgment as a matter of law on the merits and denies defendants' motions for judgment as a matter of law as moot.

I

At least four national political organizations, as well as a number of state organizations, currently use the term "Reform Party" in their names. All

apparently trace their origins at least in part to Ross Perot's failed 1992 and 1996 candidacies for President of the United States. Two national parties—the Reform Party of the United States (“RPUSA”) and the American Reform Party—were formally created in 1997. The American Reform Party remains intact, while the RPUSA has spawned at least three separate factions. Of the three, one—sometimes denominated the “reconstituted” Reform Party of the United States— adopted its own separate charter in 2004. The other two, however, both claim to operate under the RPUSA constitution (as amended) and to be the “real” RPUSA; each denies the legitimacy of the other.

This action has been filed and prosecuted in the name of the RPUSA by officers who were elected at a national convention in Tampa, Florida, in June 2005. For convenience, these officers and those who acted in concert with them are referred to in this opinion (though not by these persons themselves) as the “Kennedy faction.”¹ Defendants are nine individuals who may be divided into four categories: (1) RPUSA officers prior to the Tampa convention who were purportedly ousted there;² (2) officers elected at a later convention in Yuma,

¹ These include Charles Foster and Beverly Kennedy, who were elected at the Tampa convention as chair and treasurer, respectively. Ms. Kennedy was plaintiff's representative at the jury trial in the case at bar.

² These defendants are former RPUSA chair Shawn O'Hara and former vice chair Shene' Hoffpauir.

Arizona, that was called not by the Tampa-elected officers but by the former officers who purportedly had been ousted in Tampa;³ (3) individuals associated with the “reconstituted” Reform Party of the United States;⁴ and (4) individuals associated with the American Reform Party.⁵

By this action the Kennedy faction, purportedly acting on behalf of the RPUSA, seeks injunctive relief and damages based on defendants’ alleged infringement of Reform Party service marks. Defendants have contested plaintiff’s claims on various grounds. One is the alleged invalidity of the change of officers at the Tampa convention. Defendants contend that the Tampa convention was called and conducted in violation of the RPUSA constitution and rules. Defendants contend that all of the actions taken at Tampa, including the purported election of new officers, were invalid. Defendants contend that the officers elected at Tampa therefore have no authority to speak for—and thus to bring this action in

³ The Yuma-elected defendants are chair Rodney Martin and secretary John Blare. Plaintiff did not originally name Mr. Blare as a defendant, but he sought and was granted leave to intervene on the eve of trial. Valli Sharpe-Geisler, vice chair, was originally named as a defendant but settled with plaintiffs some two weeks prior to trial.

⁴ These defendants are Nelson “Skip” Foley, Jeanne Doogs, and Jerome Heinemann (chair, vice chair, and secretary, respectively, of the reconstituted Reform Party of the United States).

⁵ These defendants are Roy Downing and Denise Richardson (chair and vice chair, respectively, of the American Reform Party).

the name of—the RPUSA.

For its part, plaintiff asserts the actions taken at Tampa were valid and that the officers who authorized institution of this action had full authority to do so. Plaintiff seemingly concedes, however, that if the Tampa-elected officers are not in fact the duly elected officers of the party, then plaintiff is entitled to no relief in this action.

This issue—the validity of the election of officers in Tampa—was severed for separate jury trial prior to trial of any other issues. At the conclusion of all the evidence, plaintiff and some defendants moved for judgment as a matter of law. The motions were taken under advisement as authorized under Federal Rule of Civil Procedure 50.

After appropriate instructions explaining the applicable law, the jury was asked to answer a single question: “Do you find by the greater weight of the evidence that the vote changing officers at the June 2005 Tampa convention was valid?” The jury answered, “No.”

III

Though sometimes referred to by the parties as an issue of standing, the validity of the election of officers at the Tampa convention also implicates the merits. This is so because if the Tampa election was invalid, then the officers

purportedly ousted there and their successors elected at Yuma were lawful RPUSA officers entitled to use the marks at issue; their use was not infringing.

IV

The RPUSA has a written constitution that establishes a system of governance. The entities or individuals with a role in the process include the national convention, national committee, executive committee, and national officers (including the nation party chair, vice chair, secretary, and treasurer). The constitution declares the national convention to be the “supreme governing body” of the party. (Pl. ex. 1, Reform Party Constitution, art. III § 9.) When the national convention is not in session, the pecking order, at least in general, is national committee, executive committee, and national party chair, in descending order of authority. Officers are elected and may be removed by the national convention.

In the early months of 2005, the national convention was not in session. The national committee met frequently—sometimes daily—always by telephone conference call, and the meetings went on for hours. The party was in substantial disarray, both organizationally and financially. One could reasonably have labeled the committee and its meetings “dysfunctional.”

Faced with this situation, some in the party—the Kennedy faction—set out to effect a change. First, invoking a constitutional provision under which a

national committee meeting could be called by one-fourth of the national committee members, they called an in-person national committee meeting for 10:00 a.m. on April 23, 2005, at a specified hotel in Atlanta, Georgia. Notice of the meeting was sent to all national committee members by email (as authorized under the constitution) on April 8, 2005, some 15 days in advance. The notice listed the agenda as:

- Status/state of the RPUSA
- Suspension of Treasurer and Vice-Chairman
- Old/unfinished business
- New/other business

(Pl. ex. 5.) The call of the meeting complied in all respects with the constitution and rules as then in effect.

Second, invoking a constitutional provision under which an executive committee meeting could be called by any three executive committee members, the Kennedy faction called an executive committee meeting for 12:30 p.m. on April 23, 2005—the same day as, but two and a half hours later than, the national committee meeting. The executive committee meeting was to take place at the same hotel in Atlanta. Notice of the meeting was sent to all executive committee members by email (again as authorized by the constitution) on April 18, 2005, some five days in advance. The notice listed the agenda as rescinding two specified rules and “Other Business.” (Pl. ex. 6.) The call of the meeting complied

in all respects with the constitution and rules as then in effect.

A meeting of the national committee was conducted by telephone conference call on April 22, 2005, the day before the slated Atlanta in-person meetings of the national and executive committees. (Pl. ex. 18.) At the April 22 meeting, with a quorum in attendance, the national committee adopted a number of rules for the conduct of national and executive committee meetings. By their terms the new rules required at least 30 days' advance notice of any in-person meeting of the national or executive committee (*id.* at 9 § H); said that the notice of an in-person meeting had to include the "exact text" of any motion that would be taken up (if fewer than 45 days' notice of the meeting was given) or the "complete and accurate purport" of any motion (if more than 45 days' notice was given) (*id.* at 9-10 § H); specified that any in-person meeting was to be videotaped or recorded stenographically (*id.* at 13 § T); and said that any in-person meeting not held in conjunction with a national convention was to be made accessible by teleconference to all members (including for voting), failing which any action taken at the meeting would be "null and void." (*Id.* at 13 § U.) Another new rule adopted at the April 22 meeting specified that a vote by the national or executive committee to call a national convention or to declare an emergency required "previous notice." (*Id.* at 10 § I.)

Before the times set for the April 23 in-person national and executive committee meetings in Atlanta, objections to those meetings were sent by facsimile to the RPUSA secretary at the hotel where the meetings were to take place. The objections asserted improper notice, failure to comply with the rules adopted on April 22, and lack of a quorum.

The in-person meeting of the national committee convened in Atlanta on April 23, 2005, in accordance with the prior notice and without regard to either the new rules purportedly adopted on April 22 or the faxed objections, which at least some participants had received. National chair Shawn O'Hara was not present. Charles Foster was elected to chair the meeting. No teleconference hookup was provided. At least 16 and not more than 19 national committee members attended. A quorum would have been at least 23 and probably 24. A quorum thus was lacking. The meeting nonetheless went forward. No objections were made at the meeting to the lack of a quorum or any other procedural irregularities. The national committee voted unanimously to rescind all special rules of order (presumably a reference to at least the rules purportedly adopted at the April 22 meeting). The national committee then broke for lunch.

During the break, a meeting of the executive committee convened. Janelle Weill, a member of the committee, presided. Six of the committee's 11

members—a quorum—attended. No objections were made to any alleged procedural irregularities. The executive committee formally declared an emergency and called a national convention in Tampa on June 3-5, 2005, in order “to resolve the utter chaos and financial difficulties” of the RPUSA. (Pl. ex. 8 at 1 § 1.)

After the executive committee meeting adjourned, the national committee meeting resumed, still without a quorum and also without any objections to this or any other procedural irregularity. The national committee unanimously ratified the executive committee’s actions and directed the national secretary to send out notice of the call to national convention.

The secretary sent out the call to everyone entitled to notice of a convention. Mr. O’Hara, the national chair, had no role in the process; he did not approve or participate in any way in the call of the convention. Neither the national committee nor the executive committee nor anyone else asked him to do so.

The national committee met again by telephone conference call on May 2, 2005. A quorum was present. The national committee passed a motion declaring all actions taken by the national committee on April 23 “null and void” for lack of a quorum. The national committee declared the executive committee’s call for a national convention “null and void” on the ground that an emergency could not be

declared without notice, that an in-person meeting could not properly be called at all on four and a half days' notice, and that the executive committee could not properly take up an issue—the call of a convention—that was under consideration by the RPUSA's separate "Special Committee on Site Selection." The national committee also voted to terminate the executive committee's authority to take any further action, instead limiting the executive committee to the role of making recommendations to the national committee. The national committee apparently made no attempt to square these actions with the constitution, which afforded the executive committee a role in calling a convention and in governing the party between meetings of the national committee.

On June 1, 2005, the executive committee met by telephone conference call, now with a change in membership (approved by the national committee) that shifted the balance of power. At the time of the April 23 meeting in Atlanta, six of the 11 executive committee members were aligned with the Kennedy faction; it was those six who attended the Atlanta meeting and unanimously voted to call the Tampa convention. With the change in membership prior to the June 1 meeting, six of the executive committee's members—the five who missed the Atlanta meeting and the new member—opposed the Kennedy faction. At the June 1 meeting, the new majority passed motions declaring that (1) the April 23 executive

committee meeting was “improperly called,” (2) “no valid actions were taken there,” (3) the executive committee “has made no valid call for the National Convention in 2005,” and (4) “there will not be a call to the 2005 RPUSA National Convention until after September 21, 2005.” (Def. ex. 5.06/01/05 at 4.)

A national convention convened in Tampa at 5:00 p.m. on June 3, 2005, in accordance with the secretary’s call as purportedly authorized on April 23 by the national and executive committees. Some 29 delegates from seven states were present at the opening; the number grew to at least 40, and perhaps as many as 45, during the convention. Mr. O’Hara, the national chair, was not present. Mr. Foster was elected to chair the convention. After addressing other business— primarily proposed changes to the party’s constitution—the convention elected new national officers, including Mr. Foster (chair) and Ms. Kennedy (treasurer).

Those outside the Kennedy faction did not, however, recognize the new officers. Mr. O’Hara, claiming still to be the RPUSA chair, eventually called a national convention in Yuma, Arizona. The Kennedy faction did not attend, but others did, electing a different slate of officers, including Rodney Martin (chair) and John Blare (secretary).

V

The sole issue the jury was asked to determine in this phase of the trial was

whether the vote that was taken to elect new Reform Party officers at the national convention in Tampa in June 2005 was valid. The issue now before the court is whether, based on all of the evidence, a reasonable jury could have answered in the negative, as this jury in fact did.

The jury was instructed without objection that in order for action taken at the national convention to be valid, the convention must have been called and the action must have been taken in substantial compliance with the Reform Party's constitution and rules as then in effect, except to the extent that compliance was validly waived. The jury was told, again without objection, that for this purpose substantial compliance meant compliance in all respects that would make a difference to a reasonable person acting in good faith. Thus, the jury was told (still without objection), an action was taken in substantial compliance with the constitution and rules even if it failed to comply in some respect that did not affect any person's significant rights.

The Reform Party's constitution as in effect at the relevant times provided that a national convention could be called in two ways. Under either method, the constitution required notice to be mailed to each state party organization chair and all known elected delegates and alternates at least 35 days, and not more than 90 days, in advance. Mail, within the meaning of this provision, included e-mail.

These notice requirements were met for the Tampa convention.

The first method for calling a national convention was this. A convention could be called by the national chair, if requested by a two-thirds vote of the executive committee or by a majority vote of the national committee. The two-thirds requirement (for the executive committee) and majority requirement (for the national committee) applied to those voting, not to the total number of committee members.

The jury was instructed, without objection, that a call to a convention issued by an officer other than the national chair was in substantial compliance with the constitution's provisions establishing this method for calling a convention only if the national chair received a request to call a convention that he knew, or in the exercise of reasonable diligence and good faith should have known, was a proper request (that is, a request by a two-thirds vote of the executive committee or by a majority vote of the national committee), and, after receiving the request, the national chair refused to call the convention. The jury was further instructed, again without objection, that if, after exercising reasonable diligence, the national chair believed in good faith that a request to call a convention was not a proper request, and the national chair refused to call a convention for that reason, a call to convention issued by any other officer was not in substantial compliance with the

constitution's provisions establishing this method for calling a convention.

This jury instruction accorded with common law principles governing calls of corporate meetings:

The formalities prescribed for calling meetings of the corporation and its managing board must be substantially followed. But it is also important that the business and conduct of corporations should not be hampered and interrupted by some willful refusal of an officer to perform a mere clerical duty imposed on him. If there be such refusal, and the duty is to all intents and purposes as well performed by some other officer of the corporation, its business should not be at a standstill unless some good reason exists therefor.

Whipple v. Christie, 122 Minn. 73, 78, 141 N.W. 1107, 1109 (1913). *See also Boericke v. Weise*, 156 P.2d 781, 785-86 (Cal. App. 2d 1945) (upholding call of special stockholders' meeting: "[s]ubstantial compliance with the prescribed mode is all that is required. Fletcher, *Cyclopedia of Corporations*, Perm. Ed., Vol. 5, p. 12, § 1998."); *Hawkins v. Aid Ass'n for Lutherans*, 338 F.3d 801, 808 (7th Cir. 2003) ("Disputes between a voluntary association and its members are governed by the law of contracts, with the bylaws creating legally enforceable obligations. . . . And in contract law, substantial compliance with contractual duties is often compliance enough.") (citations omitted).

The jury could reasonably have concluded that the Tampa convention was not validly called under this method because the national chair, Mr. O'Hara, did not call the convention and was never asked to do so. The constitution did not

authorize the national committee or executive committee to bypass the chair in this manner. Moreover, had he been asked, Mr. O’Hara might well have concluded in good faith that neither the national committee nor the executive committee had validly voted to call the convention. The national committee, after all, plainly had no quorum at any time during the April 23 meeting. And while the executive committee had a quorum, colorable issues were raised at least about compliance with procedures put in place by the national committee. Mr. O’Hara’s duty to call a convention in these circumstances at all—and especially for a time and place different than the majority of the national committee apparently favored—was not merely ministerial.

The second method for calling a national convention applied only in an emergency that was officially declared by majority vote of the national committee or executive committee. In an officially declared emergency, a convention could be called “as needed.” (Pl. ex. 1 at art. III, §10(c).) It was this method on which the Kennedy faction apparently relied, at least primarily, in calling the Tampa convention.

The jury was instructed without objection that:

In an officially declared emergency, a convention could be called “as needed,” either by the national chair or by any other person properly authorized by the national committee or executive committee to issue the call. An emergency could be “officially declared” only by majority

vote of the executive committee or national committee. A call to a convention was made “as needed” only if the national committee or executive committee determined in good faith that there was a need, for substantial reasons, to call the convention more quickly or in a different manner than it could or would have been called by the national chair under the non-emergency procedure (the first method for calling a national convention as described above). Substantial reasons that would support the need to call a convention by the emergency method included, for example, any need for a convention in order to resolve significant disputes or resolve impediments to governance of the Reform Party. But substantial reasons that would support the need to call a convention by the emergency method did not include a desire to call a convention at a different time or place than would be called by the national chair in order to gain a strategic advantage such as improving the turnout of one’s supporters relative to the turnout of one’s opponents.

Jury instructions (document 354) at 10-11.

A reasonable juror could have concluded that the Tampa convention was not properly called by this method. True enough, the national committee was dysfunctional or nearly so; a member of the national or executive committee might will have concluded that something needed to be done. But Mr. O’Hara was already at work on calling a national convention; a committee was in place and bids were being solicited toward that end. A reasonable juror might have concluded that calling the Atlanta in-person meetings and the Tampa convention was not a response to any real emergency but was instead a ploy to wrest power from the majority.

If a political party is to hold national conventions, someone of course must

decide when and where a convention will take place. Under the Reform Party constitution, the national or executive committee may vote to hold a convention, but the national chair must issue the call, except in an officially declared emergency. While the record includes no evidence of why this provision was adopted, an important possible purpose is not hard to discern: if the call ordinarily must be made by a single official, the risk of conflicting calls—the very difficulty that spawned the case at bar—is substantially reduced.

The Kennedy faction went forward with the Tampa convention even though (1) the national committee that voted to call the convention plainly had no quorum, (2) the executive committee that voted to call the convention was operating in violation of rules adopted by the national committee, (3) the national chair did not call the convention, was not asked to do so, and would have had good faith grounds for refusing to do so if asked, and (4) the national committee and a reconstituted executive committee both voted prior to the convention to declare the call to convention null and void. A reasonable juror could have concluded—and this jury did conclude—that the Tampa convention was not validly called.

VI

In sum, on this evidence a reasonable jury could have reached the verdict that this jury reached. Based on that verdict, the plaintiff—the Reform Party of the

United States under the auspices of the Kennedy faction—has no right to control the marks at issue in this proceeding or otherwise to recover from these defendants.

Accordingly,

IT IS ORDERED:

Plaintiff's oral motion for judgment as a matter of law, as made at the conclusion of all evidence at trial, is DENIED. Defendants' oral motions for judgment as a matter of law, as made at the conclusion of all evidence at trial, are DENIED AS MOOT.

SO ORDERED this 22d day of August, 2007.

s/Robert L. Hinkle _____
Chief United States District Judge