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FEDERAL ELECTION COMMISSION

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JAMES MANGIA,

Complainant,

vs.

PATRICK J. BUCHANAN,
BUCHANAN REFORM, ANGELA
BAY BUCHANAN, AND
GERALD M. MOAN

Respondents.

MUR 5068

RESPONSE TO COMPLAINT FILED BY JAMES MANGIA

We submit on behalf of respondents Patrick Buchanan, Buchanan Reform, Inc., and Angela "Bay" Buchanan a response to a complaint filed pursuant to Title 2 U.S.C. § 437g on August 17, 2000 by James Mangia. The complaint should be dismissed because Mr. Mangia has failed to meet the threshold requirement of Section 437g to plead a violation of the Federal Election Campaign Act of 1971, as amended, Chapter 14 of Title 2 of the United States Code (the "Act") or the Presidential Election Campaign Fund Act, Chapters 95 or 96 of Title 26 of the United States Code (the "Fund Act").

INTRODUCTION

The allegations in Mr. Mangia's complaint solely involve matters relating to the internal operations of the Reform Party of the United States of America, which are governed by its

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COMMISSION
OFFICE OF GENERAL
COUNSEL

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Constitution and other organizational documents, and not by the Act or the Fund Act.¹

Consequently the issues Mr. Mangia has raised are not within the jurisdiction of the Commission. Mr. Mangia seeks to have the Commission adjudicate whether Mr. Buchanan's nomination at the Reform Party Convention was conducted in accordance with the Party's internal rules, but he has come to the wrong forum. Courts have repeatedly held that the convention of a political party is the proper forum to resolve disputes about the interpretation and application of the rules and regulations governing a party's nominating process – not a court; and *a fortiori*, not the Commission. Mr. Hagelin and his supporters “walked out” of the Reform Party Convention, and in doing so they forfeited their opportunity to raise in the appropriate forum the internal procedural issues they improperly seek to raise here.

Mr. Mangia attempts to “bootstrap” his objections to the conduct of the Reform Party's nominating process into a violation of the Presidential Election Campaign Fund Act by contending that “any representation to the FEC by ... any of the Respondents, that Patrick J. Buchanan is the valid and lawful Reform Party Nominee for the office of the President of the United States, constitutes a false, fictitious, and fraudulent representation to the FEC, in violation of 26 U.S.C. 9012(d)(12).”² This contention rests on a false premise. As we demonstrate below, Mr. Buchanan and Ms. Foster were chosen as the Reform Party nominees at the Reform Party Convention. Assuming for the sake of argument that Mr. Mangia's allegations of procedural irregularities are accurate – which they are not – this does not change the operative fact of the

¹ Mr. Hagelin also alleges a violation of 42 USC § 1974, the enforcement of which is not within the jurisdiction of the Commission. Furthermore, Mr. Hagelin does not allege any facts sufficient to show that any representative of the Reform Party engaged in any action amounting to either the failure to “retain and preserve” or the destruction of records covered by the Statute.

² Mangia Original Sworn Complaint, p. 13 (August 10, 2000).

nomination of Mr. Buchanan and Ms. Foster pursuant to the Reform Party Convention. The FEC need not go beyond that simple fact to assure itself no "false and fraudulent representation" has occurred. Indeed, to do more would involve an examination of internal political party matters in which, for many good reasons, courts have refused to engage and into which the Commission certainly should not venture.

A. Mr. Buchanan and Ms. Foster Were Nominated By the Reform Party Convention

The Reform Party nominated Mr. Buchanan as its candidate for the office of President of the United States, and Ms. Foster as its candidate for the office of Vice-President of the United States, at its convention in the Long Beach Convention Center, Long Beach, California ("the Convention").³ The Convention was called into session,⁴ pursuant to Article III, Section 10 of the Constitution of the Reform Party,⁵ by Mr. Gerald Moan, the Chairman of the Reform Party,⁶ and was chaired by Mr. Moan. The Convention site had been a subject of controversy and the Mr. Moan's selection of the Long Beach site was confirmed by the federal district court for the

³ Mr. Buchanan and Ms. Foster's selection was certified by Mr. Gerald Moan, the Chairman of the Reform Party, Mr. Tom McLaughlin, its Treasurer, and Mr. Phil Alexander, its Secretary. (See Appendix A). Mr. McLaughlin is also the Treasurer of the National Committee of the Reform Party, the registered political committee of the Reform Party. (See Appendix B).

⁴ A copy of the Convention "call" is attached as Appendix C.

⁵ A copy of the Reform Party Constitution is Attached as Appendix D.

⁶ Mr. Moan has been a member of the Reform Party for many years. Mr. Moan was elected Vice-Chairman at the Dearborn, Michigan Convention in 1999. At that meeting Mr. John Gargan was elected to serve as Chairman and Mr. Jim Manga was elected to serve as Secretary. Their terms commenced on January 1, 2000 and ending on December 31, 2000. Shortly after his term commenced, Mr. Gargan was removed as Chairman at a National Committee Meeting in Nashville Tennessee and replaced by Mr. Pat Choate. The validity of Mr. Gargan's removal, and Mr. Choate's election was affirmed by a federal district court in Reform Party of the United States v. Gargan, 89 F.Supp.2d 751, 761-62 (W.D. Va. 2000). Subsequently, Mr. Choate resigned his position and Mr. Moan, as Vice Chairman, assumed the role of Chairman.

Western District of Virginia in Reform Party of the United States v. Gargan, 89 F.Supp.2d 751 (W.D. Va. 2000).

Mr. Moan was also the Chair and Treasurer of the Convention Committee, which received federal entitlement to funds (pursuant to 26 U.S.C. § 9008) to defray the cost of the Reform Party Convention. Mr. Moan's selection as the Chair/Treasurer of the Convention Committee was also confirmed in Reform Party of the United States v. Gargan, *supra*, at 761.

In his capacity as Chair/Treasurer of the Convention Committee, Mr. Moan asked for and received from the Commission an Advisory Opinion (AO2000-06) authorizing the expenditure of the federal funds made available to the Reform Party to conduct its convention to pay for the primary preference ballot. In its Advisory Opinion, the Commission noted that the candidate receiving a majority of the first-choice votes would be the Presidential nominee, unless two-thirds of the delegates voted to reject the results of the primary preference ballot and elect the nominee by a direct vote. AO2000-06 at 5, n.5. In the primary preference balloting Mr. Buchanan received twice as many first-choice votes as Mr. Hagelin. Nevertheless, at the Convention more than two thirds of the delegates voted to abandon the primary preference ballot and to determine the nominee by direct vote. The Convention then almost unanimously selected Mr. Buchanan and Ms. Foster to be the Presidential and Vice-Presidential nominees of the Reform Party. (See Declaration of Gerald Moan, Appendix E).

Mr. Buchanan and Ms. Foster's selection has been certified by Mr. Gerald Moan, the Chairman of the Reform Party, and by Mr. Tom McLaughlin, its Treasurer. Mr. McLaughlin has been a long time member of the Reform Party. He is also the Treasurer of the National Committee of the Reform Party, the political committee of the Reform Party that is registered with the Commission. Mr. McLaughlin was elected as Treasurer of the Reform Party during a

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National Committee meeting in Nashville, and the validity of his election was also confirmed by the District Court in Reform Party of The United States v. Gargan, *supra*, at 761. Mr. Moan and Mr. McLaughlin are two of the three National Officers of the Reform Party who appear on the call to the Convention.⁷ Moreover, since the early part of this year, and with the explicit approval of the National Committee of the Reform Party and the District Court, they have been the representatives from the Reform Party to the Commission. Common sense dictates that the Commission should continue to rely on them in ascertaining the nominees of the Reform Party.

The Commission need not, and indeed should not, consider complaints about the internal processes of the Reform Party leading up to the Convention or at the Convention, such as the seating of Convention delegates. The Reform Party Constitution – like most party constitutions – makes the Convention the “supreme governing body” of the Reform Party and gives the Convention all power and authority over the affairs of the Reform Party.⁸ As the District Court noted in Reform Party v. Gargan:

Courts are traditionally reluctant to interfere with the internal operations of political parties. Irish v. Democratic-Farmer-Labor Party of Minnesota, 399 F.2d 119, 120 (8th Cir. 1968), citing Lynch v. Torquato, 343 F.2d 370 (3d Cir. 1965). Specifically, with regard to the credentialing of delegates the national party determines whether a state’s delegates are seated at a national party convention. See Democratic Party of United States v. Wisconsin, 450 U.S. 107, 126, 101 S.Ct. 1010, 67 L.Ed.2d 82 (1981); See also Cousins v. Wigoda, 419 U.S. 477, 489, 95 S.Ct. 541, 42 L.Ed.2d 595 (1975) (holding that the First Amendment protected the party’s right to determine the composition of state delegations). Ultimately, “the proper forum for determining intra-party disputes as to which delegates shall be seated” is the convention itself. O’Brien v. Brown, 409 U.S. 1, 4, 92 S.Ct. 2718, 34 L.Ed.2d 1 (1972), vacated as moot, 409 U.S. 816, 93 S.Ct. 67, 34 L.Ed.2d 72,

⁷ The Reform Party Constitution provides for four “National Officers,” a Chairman, a Vice-Chairman, a Secretary, and a Treasurer. With the resignation of Mr. Choate as Chairman, only three officers remained.

⁸ Democratic-Farmer-Labor State Central Committee v. Holm, 33 N.W. 2d 831 (1948); State, Ex Rel Hans Fosser v. Lavik, 83 N.W. 914 (1900); see also Reform Party Constitution, Art. III, § 9(a), (b).

73; see also Irish, 399 F.2d at 120 ("the attitude [of the courts] has been one of reluctance and of willingness to have the challenged body initially given the opportunity to attempt to reorganize itself").

89 F.Supp.2d at 760.⁹ Thus, even the courts – which are clearly better suited than the Commission to consider objections to the internal processes of political organizations – have refused to entertain such issues, particularly where, as here, the objections were not raised to the Convention itself.

B. Mr. Mangia Has No Basis For the Claim That John Hagelin Is the Reform Party Nominee

Mr. Mangia's representation that John Hagelin he is the nominee for the Office of President of the United States for the Reform Party of the United States of America is invalid, as it has absolutely no legal support, and is clearly a claim asserted without authorization from the official Reform Party of the United States of America.

If we examine the primary preference ballot, Mr. Buchanan defeated Mr. Hagelin by a margin of approximately 2 to 1. Although more than two-thirds of the delegates to the Convention did in fact vote to set aside the ballot, Mr. Mangia cannot rely on that vote and, at the same time ignore the selection (by those same delegates) of Mr. Buchanan and Ms. Foster as the Reform Party nominees.

To the extent Mr. Mangia contends that the splinter group of delegates supporting John Hagelin's nomination represents the official view and decision of the Reform Party of the United

⁹ Democratic-Farmer-Labor State Central Committee v. Holm, 33 N.W. 2d 831 (1948); State, Ex Rel Hans Fosser v. Lavik, 83 N.W. 914 (1900).

States of America, his argument is utterly without legal merit. In numerous cases, courts have held that a minority of delegates to a political convention cannot withdraw from the regular convention and successfully claim that they constitute the legal party convention. Democratic-Farmer-Labor State Central Committee v. Holm, 33 N.W. 2d 831, 833-38 (S.D. 1948); State ex rel. Howells v. Metcalf, 100 N.W. 923, 925-26 (S.D. 1904); State ex rel. Gronvold v. Porter, 91 N.W. 944 (N.D. 1902). Mere assertion of the claim that a splinter faction of delegates represents the official Reform Party is inadequate to support the contention that Mr. Hagelin's nomination is proper.

C. Mr. Mangia's Allegations of Irregularity In the Nominating Process Are Without Merit

As we have indicated above the Commission need only consider the results of the Reform Party Convention, and, consistent with the overwhelming weight of court precedent, the Commission neither can, nor should, entertain Mr. Mangia's allegations of irregularity in the process under the Reform Party Rules.¹⁰ Nevertheless, we will, for the sake of completeness, address these allegations below and show their total lack of merit.

Mr. Mangia's primary contention is that Mr. Buchanan was "disqualified" from the primary preference balloting at a meeting of the Executive Committee because he had allegedly supplied to the Reform Party Presidential Nominating Committee the names of persons (to receive ballots) who had not "requested ballots" as required under Section IV(2)(c) of the

¹⁰ A copy of the Rules for the Selection of Reform Party of the United States Nominees for President and Vice President of the United States is attached as Appendix F.

Rules.¹¹ Mr. Mangia's contention is specious for several sound factual and legal reasons, and the "process" of Mr. Buchanan's alleged disqualification reveals in stark terms the lack of procedural or factual integrity that has characterized the actions of the dissident few who refuse to accept that Mr. Buchanan is the choice of the overwhelming majority of the Reform Party members.

First, Mr. Buchanan's alleged disqualification from the ballot at the purported Executive Committee meeting is irrelevant, since the Rules provide that the ballot may be set aside, and the nominee for President elected by a direct vote of the delegates. (See Appendix D, Section IV(11)). Since the ballot was set aside at the Convention and since Mr. Buchanan was nominated by the direct vote of the delegates, the dispute about the "ballot" is moot.

Second, neither the Executive Committee nor the PNC had any authority under the rules to disqualify Mr. Buchanan. The rules provide that once the ballot is distributed only the Convention can overturn or disregard its results. Mr. Dale Cooter, the Reform Party General Counsel, confirmed that interpretation of the Rules.¹²

Third, the PNC did not vote to disqualify Mr. Buchanan. To the contrary, the disqualification vote did not carry because Mr. Moan, the recognized Chairman of the Party and Mr. McLaughlin, its recognized Treasurer, who were ex officio members with the right to vote, appeared and voted against the illegal disqualification effort.¹³ Moreover, the purported

¹¹ It is worth noting that Section IV(2) includes three separate criteria for eligibility to receive Reform Party Presidential Primary ballots. See Appendix D, Section IV(2)(a) & (b).

¹² See Mangia Original Sworn Complaint, Exhibit "J" at 3.

¹³ Id.

Executive Committee meeting at which Mr. Buchanan was allegedly disqualified was not properly called and, in any event, had no authority to overrule the decision of the PNC.

Finally, the alleged disqualification of Mr. Buchanan rested not on any evidence of wrongdoing, but on Mr. Buchanan's refusal to cooperate with the ultra vires actions of the PNC, a refusal that was based on the advice of the Reform Party General Counsel that the matter could not be addressed legally by the PNC, but only by the Convention. The Executive Committee's decision was totally arbitrary, unsupported, and unjustified.

D. Mr. Mangia's Behavior At the National Committee Meeting Demonstrates his and Mr. Hagelin's lack of good faith

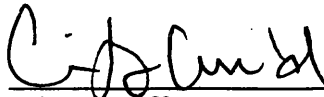
Mr. Mangia does not dispute that the National Committee meeting called on August 8th was properly called. Mr. Mangia and Mr. Moan had agreed previously on a list of National Committee members, but, despite their agreement (reflected in the posting of the certified list of names on the Reform Party website at the National Committee meeting) Mr. Mangia challenged 120 of the National Committee's 160 recognized members on the list. Although these challenges were completely without substantiation or substantive merit, Mr. Mangia contended that only the 40 persons who had not been challenged could vote on any of the challenges. When the Chair refused to count once this absurd effort to disrupt the proceedings, Mr. Mangia withdrew with his 22 supporters on the National Committee. In other words, Mr. Mangia had put forth spurious challenges to 120 of the 160 recognized National Committee members with the aim of creating a 40 person "national committee" that he could dominate with his 22 supporters, and which would then pass on the "objections" he had lodged to the other 120 members with predictable results. For the reasons cited above in Section B of this response, these claims should not be taken

seriously, and any assertions that the conduct of Mr. Mangia and the 22 delegates represent the official actions of the Reform Party of the United States of America should be disregarded.

CONCLUSION

For the above reasons, the complaint should be dismissed.

Respectfully submitted,



John J. Duffy

Eric A. Greenwald

Alice E. Loughran

Steptoe & Johnson LLP

1330 Connecticut Avenue, N.W.

Washington, D.C. 20036

(202) 429-3000

Attorneys for Patrick Buchanan,
Buchanan Reform, Inc. and
Angela "Bay" Buchanan

TABLE OF APPENDICES

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A

CERTIFICATE OF NOMINATION

To: The Honorable Elaine F. Marshall
Secretary of State
P.O. Box 29622
Raleigh, NC 27626-0622
and
Larry Leake, Chairman
State Board of Elections
506 N. Harrington Street
Raleigh, NC 27603-1326

We hereby certify that as a result of the Reform Party, USA national nominating convention held on August 9, 2000 through August 13, 2000 in Long Beach, California that the following have secured nomination as candidates for President and Vice President of the United States of the Reform Party of the United States of America, and should appear on the November 7, 2000 general election ballot in the State of North Carolina as the candidates of the Reform Party of North Carolina, and accompanying the Reform Party name.

For President of the United States
Pat Buchanan
1017 Savile Lane
McLean, VA 22101

For Vice President of the United States
Ezola Foster
12012 Washington Place, Apt. 7
Los Angeles, CA 90066

Gerald M. Moan

signature
Gerald M. Moan
Chair, Reform Party, USA
Chair, Reform Party Convention

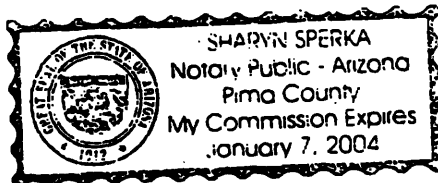
STATE OF Az)
COUNTY OF Pima)

Subscribed and sworn to before me this 17 day of August, 2000, by Gerald M Moan

Sharon Sperka
Notary Public -

My commission expires: 1/7/2004

Seal



CERTIFICATE OF NOMINATION

To: The Honorable Elaine F. Marshall
Secretary of State
P.O. Box 29622
Raleigh, NC 27626-0622
and
Larry Leake, Chairman
State Board of Elections
506 N. Harrington Street
Raleigh, NC 27603-1326

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For President of the United States
Pat Buchanan
1017 Savile Lane
McLean, VA 22101

For Vice President of the United States
Ezola Foster
12012 Washington Place, Apt. 7
Los Angeles, CA 90066


signature
Thomas J. McLaughlin
Secretary, Reform Party Convention

STATE OF N)
COUNTY OF S&K)

Subscribed and sworn to before me this 17 day of August, 2000, by Pat Buchanan

My commission expires:

Seal

RHONDA A. JONES
NOTARY PUBLIC OF NEW JERSEY
Commission Expires 3/11/2004


Notary Public

CERTIFICATE OF NOMINATION

To: The Honorable Elaine F. Marshall
Secretary of State
P.O. Box 29622
Raleigh, NC 27626-0622
and
Larry Leake, Chairman
State Board of Elections
506 N. Harrington Street
Raleigh, NC 27603-1326

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For President of the United States

Pat Buchanan
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McLean, VA 22101

For Vice President of the United States

Ezola Foster
12012 Washington Place, Apt. 7
Los Angeles, CA 90066


signature

Philip Alexander

Secretary, Reform Party, USA

Commonwealth of Massachusetts

STATE OF)

COUNTY OF Dukes County) ss.

Subscribed and sworn to before me this 17th day of August, 2000, by Philip Alexander


Notary Public - Ann K. Hunt

My commission expires: August 18, 2000

Seal

ANN K. HUNT
Notary Public
My Commission Expires August 18, 2000

NAME OF COMMITTEE IN FULL FORM PARTY OF THE UNITED STATES OF AMERICA		2. DATE 02 - FEB 22 P 3 35	
1 and Street Address 72 FERNWOOD AVENUE		3. FEC Identification Number 000 334018	
City, State and ZIP Code BARTONSVILLE, PA 18321		4. Is This Report An Amendment? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	

5. TYPE OF COMMITTEE (Check one)

- ☐ (a) This committee is a principal campaign committee. (Complete the candidate information below.)
- ☐ (b) This committee is an authorized committee, and is NOT a principal campaign committee. (Complete the candidate information below.)

Name of Candidate	Candidate Party Affiliation	Office Sought	State/District
-------------------	-----------------------------	---------------	----------------

- ☐ (c) This committee supports/opposes only one candidate _____ and is NOT an authorized committee. (name of candidate)
- ☒ (d) This committee is a **NATIONAL** committee of the **REFORM** (National, State or subordinate) (Democratic, Republican, etc.)
- ☐ (e) This committee is a separate segregated fund.
- ☐ (f) This committee supports/opposes more than one Federal candidate and is NOT a separate segregated fund or a party committee.

6. Name of Any Connected Organization or Affiliated Committee	Mailing Address and ZIP Code	Relationship
REFORM PARTY 2000 CONVENTION COMMITTEE	9219 EAST SHANTOLANE TUCSON, ARIZONA 85749	CONVENTION COMMITTEE

Type of Connected Organization

- ☐ Corporation ☐ Corporation with Capital Stock ☐ Labor Organization ☐ Membership Organization ☐ Trade Association ☐ Cooper

7. Custodian of Records: Identify by name, address (phone number -- optional) and position of the person in possession of committee records.

Full Name	Mailing Address	Title or Position
TREASURER		

8. Treasurer: List the name and address (phone number -- optional) of the treasurer of the committee; and the name and address of any agent (e.g., assistant treasurer).

Full Name	Mailing Address	Title or Position
THOMAS J. McLAUGHLIN	72 FERNWOOD AVENUE BARTONSVILLE, PA 18321	TREASURER

9. Banks or Other Depositories: List all banks or other depositories in which the committee deposits funds, holds accounts, rents safety deposit boxes, or maintains funds.

Name of Bank, Depository, etc.	Mailing Address and ZIP Code
PNC BANK, NA	1110 NORTH NINTH ST STROUDSBURG, PA 18360

I, the undersigned, being the treasurer or agent of the committee, certify that I have examined this Statement and to the best of my knowledge and belief it is true, correct and complete.

PRINT NAME OF TREASURER	SIGNATURE OF TREASURER	DATE
THOMAS J. McLAUGHLIN		02-18-00

NOTE: Submission of false, erroneous, or incomplete information may subject the person signing this Statement to the penalties 2 U.S.C. §437.

ANY CHANGE IN INFORMATION SHOULD BE REPORTED WITHIN 10 DAYS.

21-04-03-2015



reform party national convention

***** 2000 *****

Candidates
Winners

search site map documents

2000 Convention Call

- 1. General Information
- 2. Event Schedule
- 3. For Discussion
- 4. Travel Information
- 5. Multimedia
- 6. RPUSA Leadership Election
- 7. Regional Representative Election
- 8. Media Credentials
- 9. Credentials Committee Report
- 10. Rules Committee Report
- 11. Convention Call
- 12. Convention Chairman Message

TO: Reform Party Delegates and Members

DATE: June 25, 2000

SUBJECT: Call to National Convention

It is our pleasure to invite you to the 2000 National Convention of the Reform Party of the United States of America to be held at the Long Beach Convention Center, Long Beach California on August 10th, 11th, 12th and 13th, 2000.

We encourage each of you, along with your family and friends to come to Long Beach. Together we have spent years building a party based on real government reform. This will be the first Reform Party National Convention wherein we will nominate our 2ND Presidential and Vice Presidential Candidates. We will have

a spectacular week of events (see agenda enclosed).

All sessions of the National Convention and National Committee are open to the public on a "space available basis". The evening sessions will be scheduled to maximize our National Media exposure to potential Reform minded voters. We have already been contacted by various major media outlets both national and international planning coverage our Reform Party Convention in large numbers.

Enclosed is a copy of our tentative agenda, proposed amendments to our National Constitution from the Rules Committee and other information pertinent to the Convention.

- We encourage all State Chairpersons to expeditiously forward the appropriate credentials information to the Credentials committee for processing. Credential verification and voting cards for the authorized voting delegates will be issued on August 10th, 2000.
- The State Chairpersons are also requested to verify their State National Committee members are correct as posted to the National Party website as well as registered with the National Secretary.

We look forward to seeing you in Long Beach, where we will showcase to the world the true message and vision of Reform...The Reform Party of the United States of America.

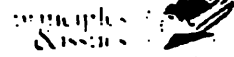
Gerald M. Moan
Chairman

Jim Mangia
Secretary

Tom McLaughlin
Treasurer

Michael Farris
Presidential Nominations

Judy Duffy
Convention Committee



search site map documents

ARTICLE I

Name

- The name of this Party shall be the Reform Party of the United States of America.

This constitution, passed November 2, 1997, was established in the Reform Party National Founding Convention in Kansas City, Missouri.

ARTICLE II

Object

The Object of the Reform Party shall be to:

- a) Establish and operate as a major national political party composed of affiliated State Party Organizations from each state;
- b) Nominate and endorse candidates for President of the United States and for Vice President of the United States;
- c) Assist in the election of such candidates;
- d) Assist State Party Organizations in the election of their candidates and voter education;
- e) Develop and promote the enactment of legislation and policies consistent with the Reform Party Principles;

Revisions:

Oct 11, 1998 in Atlanta, GA
July 23, 1999 in Dearborn, MI.

Article

- 1. Name
 - 2. Object
 - 3. National Convention
 - 4. National Committee
 - 5. Executive Committee
 - 6. Standing Committee General
- Provisions
- 7. Special Committees and Sub-Committees
 - 8. National Officer General
- Provisions
- 9. State Party Organizations
 - 10. General Provisions
 - 11. Bylaws
 - 12. Parliamentary Authority
 - 13. Amendment

ARTICLE III National Convention

- Section 1. There shall be a National Convention. The first session of the National Convention shall be designated as "The Inaugural National Convention of the Reform Party of the United States of America" and shall be further designated by the date or dates of such session, and by the location of such session. Each subsequent session of the National Convention shall be similarly titled and designated, except that such session shall be consecutively enumerated.
- Section 2. The National Convention shall be responsible for the governance of the Reform Party, and for providing for the fulfillment of the Object of the Reform Party.
- Section 3. The National Convention shall be composed of the following Delegates:
 - a) The Executive Committee
 - b) Three Statewide Delegates from each State Party Organization
 - c) One Delegate from each U.S. Congressional District.
- Section 4. Qualifications for a person to be eligible to be a Delegate shall be such that each Delegate shall:
 - a) be a member of their State Party Organization and a resident of the U.S. Congressional District and/or state for which he or she is a Delegate.

- b) be elected as provided in the Rules of their State Party Organization.
 - c) not be required to pay a personal assessment or fee as a condition of serving as a Delegate.
 - d) be registered with the Executive Committee. No person shall be deemed to be a Delegate, who is not so registered..
- **Section 5. State Party Organization rules pertaining to Delegate qualifications, eligibility, election or appointment, term of office, conditions of continuing service, removal from office, vacancies, duties, powers, subjection, participation, and voting rights, shall be observed; unless such rules are in conflict with this Constitution, or other provisions adopted pursuant to provisions of this Constitution; including the provisions of the Bylaws, the Resolutions and actions of the National Convention, and such provisions as may be specified in the Standing Rules of the National Convention.**
 - a) In the event such State Party Organization rules do not so pertain, a State Party Organization shall carry out such measures as may be required by: the National Convention, the proper directives of the National Committee, the proper directives of the Executive Committee, and such as may be provided in the Bylaws.
 - b) In the event such State Party Organization rules do so conflict, a State Party Organization shall carry out such measures as may be required by the National Convention, the proper directives of the National Committee, the proper directives of the Executive Committee, and such as may be provided in the Bylaws.
 - **Section 6. Affirmative support of the Reform Party Object, the Reform Party endorsed candidates for President and Vice President of the United States and the Reform Party Statement of Principles shall be a condition of continuing service as a Delegate.**
 - **Section 7. The removal of a Delegate shall be such that:**
 - a) Any Delegate may be removed by three-quarters vote of the registered Delegates of the National Convention. The seat of a Delegate so removed shall automatically and immediately become vacant upon such removal.
 - b) Any Delegate may be removed in accordance with the Rules of the applicable State Party Organization, except for a person who is a Delegate as a result of being an Elected National Party Officer.
 - **Section 8. Each State Party Organization may send Alternate Delegates in accordance with their State Party Organization Rules. Each Alternate Delegate must meet all the qualifications of a Delegate, shall reside in the same political district as the Delegate they replace, and shall have no voting rights until re-registered as a Delegate.**
 - **Section 9. The National Convention shall:**
 - a) be the supreme governing body of the Reform Party at the national level, subject only to the provisions of this Constitution and the provisions of the Bylaws.
 - b) have all power and authority over the affairs of the Reform Party, subject only to the provisions of this Constitution and to the provisions of the Bylaws.
 - c) have the exclusive power to grant Official Recognition to State Party Organizations. Official Recognition of a State Party Organization shall be granted by majority vote of the registered Delegates.
 - d) receive reports from the National Officers and Committees.
 - e) adopt a national Reform Party platform by two-thirds vote of the registered Delegates.
 - f) adopt a national Statement of Principles by two-thirds vote of the registered Delegates. This same requirement shall apply to amendments, additions or revisions to the Statement of Principles.
 - g) in appropriate years, provide rules and procedures for the nomination and endorsement of candidates for the office of President and Vice President of the United States, or no endorsement, such procedures shall, to the extent possible, provide for the popular selection by Reform Party members.
 - h) act upon such other matters as the National Convention deems appropriate, subject to the provisions of this Constitution and the provisions of the Bylaws.
 - **Section 10. Sessions of the National Convention shall be such that:**
 - a) Previous notice of each session of the National Convention shall be given in writing, by

means of a Call to National Convention. Such a Call to National Convention shall:

- (1) be mailed to each affiliated State Party Organization Chair and all known elected Delegates and Alternates, not more than ninety days and not less than thirty five days, prior to the date of the first scheduled business meeting of the session being called.
- (2) specify the date, hour, place and proposed agenda of the meeting.
- (3) contain other such information as is provided in this Constitution, and such as may be provided in the Bylaws.

b) The quorum of a session of the National Convention shall be the majority of all registered Delegates.

c) The National Convention shall be called into session once each calendar year. Such session shall be scheduled and arranged, and a Call to National Convention shall be properly issued by the National Party Chair, upon two-thirds vote of the Executive Committee or majority vote of the National Committee, except in a case of emergency. In a case of emergency, the National Convention may be called into session as needed such that:

(1) A case of emergency shall be deemed to exist upon such being officially declared by the Reform Party Chair, by a majority vote of the Executive Committee, or by majority vote of the National Committee.

(2) An official declaration of emergency shall in no way remove, alter, or have precedence over any of the provisions of this Constitution, or the provisions of the Bylaws.

d) The determination, allocation, exercise and tally of Delegate votes shall be such that:

(1) Only Delegates who have been properly registered and are in attendance at the time of the vote shall be eligible to vote. There shall be no proxy voting.

(2) No person shall hold more than one Delegate seat.

(3) Each Delegate shall have one and only one vote.

(4) No Delegate shall be required to cast a vote contrary to his or her preference.

- Section 11. Each Delegate shall report to the State Party Organization of which he or she is a member. The National Convention shall provide that the minutes and Resolutions of the National Convention be recorded in writing, be properly filed with Reform Party Executive Committee, be distributed to the Chairperson of each State Party Organization and be made available to the public

ARTICLE IV National Committee

- **Section 1. The National Committee shall be responsible for the conducting of the business and affairs of the Reform Party between sessions of the National Convention. Such responsibilities shall include:**
 - a) providing a procedure for the nomination of Reform Party National Officers.
 - b) the temporary filling of National Officer vacancies,
 - c) providing for the clear interpretation, proper application, and continuing pertinence of the Bylaws, and for the continuing integrity of the Bylaws with this Constitution and the Statement of Principles of the Reform Party,
 - d) formulating and promoting statements of public policy, which are consistent with the Reform Party Statement of Principles,
 - e) providing for the raising, budgeting, disbursing and accounting of the monies for the operation of the Reform Party in amounts sufficient to fulfill the Party Object, including setting the dollar amount and payment frequency of any dues, fees and assessments to be paid to the National Party by State Party Organizations.
 - f) providing for ongoing Reform Party public relations and voter education,
 - g) providing for the keeping, filing and archival storage of the official books, records and lists of the Reform Party,
 - h) assisting state Reform Party Organizations in the building of their State Party Organizations, election of their endorsed candidates and member education, and
 - i) all other actions appropriate or necessary to carry out the provisions of this Constitution and the Bylaws and carry on the successful operation of the Reform Party.
- **Section 2. The National Committee shall be composed of:**
 - a) the Executive Committee,
 - b) three statewide Delegates from each State Party Organization
- **Section 3. Affirmative support of the Reform Party Object, the Reform Party endorsed candidates for President and Vice President of the United States and the Reform Party Statement of Principles shall be a condition of continuing membership on the National Committee.**
- **Section 4. A National Committee Member shall be subject to the provisions of this Constitution and the Rules of their State Party Organization except where the State Party Organization rules conflict with this Constitution or state election laws. The State Chair shall be responsible for registering the State Party Organization's National Committee Members with the Executive Committee.**
- **Section 5. Each National Committee Member shall have the duty to serve on at least one Reform Party Standing Committee or Special Committee.**
- **Section 6. The National Committee shall meet one or more times in each calendar year. A National Committee meeting shall be called by the National Chairperson or by action of one-fourth of all National Committee members. The National Committee may conduct a vote by mail on matters pertaining to the election and/or nominating of officers, the election of committee members, the filling of vacancies, the activation and dismissal of Special Committees, the issuance of a Call to National Convention, the approval or amendment of the Reform Party budget and the amendment of the Bylaws.**
- **Section 7. A quorum of the National Committee shall be a majority of the registered National Committee Members.**
- **Section 8. The National Committee shall report to the National Convention.**
- **Section 9. National Committee Members shall be elected, not appointed, democratically by their respective State membership at State Conventions, caucuses or whatever democratic process is available, provided that such elections are in compliance with and do not violate State Election laws.**

Executive Committee

- **Section 1.** The Executive Committee shall be responsible for the conducting of the day to day business and affairs of the Reform Party, between meetings of the National Committee. The responsibilities of the Executive Committee shall include:
 - a) coordinating the efforts of the Standing Committees and the Special Committees so as to maximize efficiency, maximize resources, maximize effect and fulfill the object of the Reform Party.
 - b) providing for such organizational, administrative and financial support as the National Convention may require for its organization and operation,
 - c) providing for such organizational, administrative and financial resources as may be required to fulfill the Object of the Reform Party,
 - d) all actions appropriate or necessary to carry out the provisions of this Constitution, the Bylaws, the proper directives of the National Committee and the Resolutions and proper actions of the National Convention, and
 - e) all actions appropriate or necessary to carry on the successful operation of the Reform Party.
- **Section 2.** The Executive Committee shall be composed of the Reform Party USA Officers and seven regional representatives elected by the National Committee.
- **Section 3.** Regional Representatives to the Executive Committee shall be elected by the National Committee at the first meeting of the National Committee held in odd numbered years and shall serve for two years.
- **Section 4.** All Regional Representatives will be elected at meetings of the National Committee. Committee representatives from the states within the regions will caucus to elect one representative from each region. The regions are defined as:
 - a) Midwest Region - Illinois, Indiana, Iowa, Kentucky, Michigan, Ohio, Wisconsin, Minnesota
 - b) New England Region - Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont
 - c) Northeast Region - Delaware, Maryland, New Jersey, New York, Pennsylvania, Virginia, Washington D.C., West Virginia
 - d) Northwest Region - Colorado, Montana, Nebraska, North Dakota, South Dakota, Utah, Wyoming
 - e) Pacific Region - Alaska, California, Hawaii, Idaho, Nevada, Oregon, Washington
 - f) Southeast Region - Alabama, Florida, Georgia, Mississippi, North Carolina, South Carolina, Tennessee
 - g) Southwest Region - Arizona, Arkansas, Kansas, Louisiana, Missouri, New Mexico, Oklahoma, Texas
 - h) The duties of each Regional Representative shall be:
 - (1) Be a Member of the Executive Committee;
 - (2) Be a conduit for informational flow between the State Party organizations in the respective Region and the Executive Committee;
 - (3) Provide all organizational help possible and practical to the State Party organizations in the respective Region when requested;
 - (4) Compile a list of qualified candidates for Committee Chairmen who have the ability, experience and knowledge for each Committee, for use by the National Chairman in making appointments.
 - (5) Compile a list of any special talents that have been identified within the state parties for potential service to the national party committee.
- **Section 5.** A Regional Representative may be removed by a two-thirds vote of the registered Members of the National Committee in that particular Region.
- **Section 6.** In the event of a vacancy in the position of Regional Representative, such vacancy shall be filled by a simple majority vote of the registered Members of the National Committee in that particular Region.
- **Section 7.** The duties of the Executive Committee shall include:

- a) maintaining and providing Delegate lists and National Committee Member lists,
 - b) maintaining and keeping all national books, records and lists of the Reform Party,
 - c) taking those actions appropriate and necessary to carry out the provisions of this Constitution, the Bylaws, and the proper directives of the National Committee and the National Convention, and
 - d) taking those actions appropriate or necessary to carry on the successful operation of the Reform Party.
- Section 8. The Executive Committee shall meet as necessary to conduct the required business of the National Party. Executive Committee meetings may be called upon action of the National Party Chair or upon action of any three Executive Committee Members. The Executive Committee may conduct a vote by mail.
 - Section 9. Affirmative support of the Reform Party Object, the Reform Party endorsed candidates for President and Vice President of the United States, the Reform Party national platform and the Reform Party Statement of Principles shall be a condition of continuing service on the Executive Committee.
 - Section 10. A quorum of the Executive Committee shall be a majority of the Executive Committee Members.
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ARTICLE VI Standing Committee General Provisions

- Section 1. There shall be six Standing Committees of the National Committee. The six Standing Committees: Rules, Issues, Party Building, Finance, Public Relations and Communications.
- Section 2. The responsibilities of each Standing Committee shall be:
 - a) Rules
The Rules Committee shall be responsible for: developing and proposing amendments to this Constitution; developing and proposing bylaws and other procedural rules, including amendments thereto, for the conduct of the national party; working with various State Party Organizations in development and adoption of their state party rules; other such duties as the Executive Committee may assign.
 - b) Issues
The Issues Committee shall be responsible for: reviewing, developing and proposing platform and policy for adoption by the National Convention; developing and proposing amendments to the national party Statement of Principles; developing and implementing plans to educate voters regarding various issues; other such duties as the Executive Committee may assign.
 - c) Party Building
The Party Building Committee shall be responsible for: developing and implementing strategies to build and maintain the party as a major national political party; working with the various State Party Organizations to build and maintain the party as a major political party within each state; other such duties as the Executive Committee may assign.
 - d) Finance
The Finance Committee shall be responsible for: fundraising at the national level; developing and implementing budgets for national party operations; assisting the National Treasurer in the performance of assign duties; advising the various State Party Organizations regarding fundraising and other financial issues; other such duties as the Executive Committee may assign.
 - e) Public Relations
The Public Relations Committee shall be responsible for: developing and implementing strategies for interfacing with the media and the public; developing media contacts nationwide; other such duties as the Executive Committee may assign.
 - f) Communications
The Communications Committee shall be responsible for: developing and implementing plans to keep party members informed on various public and internal party issues; developing internal party communications links between the various committees and various State Party Organizations; other such duties as the Executive Committee may assign.

- Section 3. Each Standing Committee Chair shall be appointed by the National Chairperson. No person shall simultaneously hold more than one of the following positions: Standing Committee Chair, Standing Committee Vice Chair or National Officer. Standing Committee Chairs shall be subject to those provisions of this Constitution that apply to National Officers.
- Section 4. Affirmative support of the Reform Party Object, the Reform Party endorsed candidates for President and Vice President of the United States and the Reform Party Statement of Principles shall be a condition of continuing service on a Standing Committee.
- Section 5. The members and any additional officers of each standing committee shall be appointed by the Chairperson of such Standing Committee. No more than one-fourth of the Members of a Standing Committee shall be members of the same State Party Organization.
- Section 6. Each Standing Committee shall be subject to the provisions of this Constitution, the provisions of the Bylaws, the proper directives of the Executive Committee, the proper directives of the National Committee and the Resolutions and proper actions of the National Convention.
- Section 7. Each Standing Committee shall meet as necessary to conduct the required business of their Standing Committee. Standing Committee meetings may be called upon action of the Standing Committee Chair or upon action of one-fourth of the Standing Committee Members. Standing Committees may conduct business by mail, teleconference or other electronic media. Each Standing Committee may adopt such rules of operation as the Standing Committee Members deem necessary to conduct Committee business.
- Section 8. Each Standing Committee shall report to the Executive Committee. Each Standing Committee shall also report to the National Committee and to the National Convention.

ARTICLE VII

Special Committees and Sub-Committees

- **Section 1. Special Committees and Sub-Committees**
 - a) Special Committees may be established for specific purposes by action of the National Party Chair or by majority vote of the Executive Committee, National Committee or National Convention. The Chair of any Special Committee shall be appointed by the National Party Chair. Special Committees exist at the pleasure of the National Party Chair.
 - b) Sub-Committees to any existing Committee may be established for specific purposes by action of the parent Committee Chair. The Chair of any Sub-Committee shall be appointed by the parent Committee Chair. Sub-Committees exist at the pleasure of the parent Committee Chair.
 - c) The Members and any additional Officers of each Special Committee or Sub-Committee shall be appointed by the Chairperson of such Special Committee or Sub-Committee
- **Section 2. The responsibilities of each Special Committee or Sub-Committee shall be stated when establishing the Special Committee or Sub-Committee.**
- **Section 3. Affirmative support of the Reform Party Object, the Reform Party endorsed candidates for President and Vice President of the United States and the Reform Party Statement of Principles shall be a condition of continuing service as a Member of any Special Committee or Sub-Committee.**
- **Section 4. Each Special Committee and Sub-Committee shall be subject to the Executive Committee, National Committee, the provisions of this Constitution, the provisions of the Bylaws and to the Resolutions and proper actions of the National Convention. Each Sub-Committee shall also be subject to its specific parent Committee.**
- **Section 5. A Special Committee or Sub-committee meeting shall be called upon the action of the Special Committee's or Sub-committee's Chairperson or upon the action of one-fourth of a Special Committee's or Sub-committee's members such as is provided in this Constitution and such as may be provided in the Bylaws. A Special Committee or Sub-committee may conduct a vote by mail such as is provided in this Constitution and such as may be provided in the Bylaws. Each Special Committee or Sub-committee may adopt such rules of operation as the Special Committee or Sub-committee Members deem necessary to conduct Committee business.**
- **Section 6. Each Special Committee shall report to the Executive Committee, the National Committee, and to the National Convention provided that the Special Committee, so reporting, is properly directed to do so. Each Sub-Committee shall report to its specific parent Committee.**

ARTICLE VIII

National Officer General Provisions

- **Section 1. The National Officers shall be the Chair, the Vice Chair, the Secretary, and the Treasurer. There may be a National Executive Director of the Party, who shall not be an Officer or Member of any Committee.**
- **Section 2. The National Officers shall have the following responsibilities:**
 - a) The National Party Chair shall preside over meetings of the Executive Committee, National Committee and National Convention and act on behalf of the Party to carry out the resolutions of the Executive Committee, the National Committee and the National Convention subject to the provisions of this Constitution.
 - b) The National Party Vice Chair shall assist the National Party Chair in the operation of the Party and serve as National Party Chair in the absence of the National Party Chair.
 - c) The National Secretary shall: have custody of the official copy of this Constitution, the bylaws and any other rules adopted by the party; attend all meetings and record the proceedings of such meetings including, at a minimum, all actions taken by the Executive Committee, the National Committee and the National Convention; maintain the records (except financial) of the National Party; provide official notice of all meetings of the Executive

Committee, the National Committee and the National Convention; perform other duties as may be assigned by the Executive Committee.

d) The National Treasurer shall: have custody of the Party funds and shall keep full and accurate records thereof in books belonging to the Party; deposit all monies and other valuable effects to the name and to the credit of the Party in such depositories as may be designated by the Executive Committee; prepare and file required federal reports; disburse funds in accordance with the resolutions of the Executive Committee, the National Committee and the National Convention subject to the provisions of this Constitution; report on the financial status of the Party at each meeting of the Executive Committee, the National Committee and the National Convention.

- Section 3. Each National Officers shall be elected by majority vote of the registered Delegates at the National Convention. Each National Officer shall be elected by written ballot. National Officers shall be Party Members but need not be National Committee Members or National Committee Delegates to be eligible for election as a National Officer. Nominations shall be accepted from the floor when made by any registered Delegate. National Officer elections shall be held in each odd numbered year.
- Section 4. Each National Officer's term of office shall be two years. Each National Officer's term shall begin on the first day of January in each even numbered calendar year. No National Officer shall serve in the same National Office for more than three consecutive terms. No person shall serve as a National Officer for more than six consecutive terms.
- Section 5. Affirmative support of the Reform Party Object, the Reform Party endorsed candidates for President and Vice President of the United States, the Reform Party national platform and the Reform Party Statement of Principles shall be a condition of continuing service as a National Officer.
- Section 6. A National Officer may be removed by:
 - a) a two-thirds roll call vote of the registered Members of the National Committee, or
 - b) a majority vote of the registered Delegates of the National Convention.
- Section 7. National Officer vacancies shall be filled by majority vote of the registered Delegates of the National Convention. National Officer vacancies may be temporally filled by majority vote of the registered Members of the National Committee. A person filling such vacancy must meet the qualifications for eligibility for election as a National Officer. Such a person, so elected, shall be seated until such time as the Office is filled by majority vote of the registered Delegates of the National Convention subject to the provisions of Section 3 of this Article.
- Section 8. The Reform Party Chairperson shall be ex-officio a member of all Reform Party committees except the Nominations Committee.
- Section 9. Each National Officer shall be subject to the proper directives and actions of the Executive Committee, the proper directives and actions of the National Committee, the provisions of this Constitution, the provisions of the Bylaws and the Resolutions and proper actions of the National Convention.
- Section 10. Each National Officer shall report to the Executive Committee, the National Committee, and the National Convention.
- Section 11. Upon resolution adopted by a majority of the registered Members of the National Committee authorizing the expenditure of such funds, the National Chair shall have the authority to name any Party Member to fill the position of National Executive Director upon confirmation by a majority vote of the Executive Committee.
 - a) The National Executive Director shall not be a Party Officer or Member of any Committee and shall report directly to the National Chair.
 - b) The National Executive Director shall be responsible, at the direction of the National Chair, for the day-to-day activities of the Party, subject to the provisions of this Constitution, the bylaws, the Resolutions and actions of the National Convention, and the proper directives of the National Committee and the Executive Committee.

c) The National Executive Director may be removed from the position by two-thirds vote of the Executive Committee.

ARTICLE IX

State Party Organizations

- Section 1. A State Party Organization shall be responsible for conducting all Reform Party state level business and affairs in its constituent state democratically and for providing for the successful operation of a major state political party which is in keeping with the Principles and Object of the Reform Party of the United States of America, the provisions of this Constitution and the provisions of the Bylaws. This major state political organization which is operated by the State Party Organization is not obligated to use the name of the national party.
- Section 2. Recognition shall be granted to no more than one State Party Organization in each state or territory of the United States of America.
- Section 3. A State Party Organization may be granted Official Recognition by a majority vote of the registered Delegates of the National Convention. A State Party Organization may be granted Provisional Recognition by a two-thirds vote of the registered Members of the National Committee.
- Section 4. Official Recognition of a State Party Organization shall continue until such time as such recognition is removed. Provisional Recognition of a State Party Organization shall continue until such time as such recognition is removed or until the next National Convention.
- Section 5. The conditions of continuing Official Recognition and the conditions of continuing Provisional Recognition shall be affirmative support of the Reform Party Object, the Reform Party endorsed candidates for President and Vice President of the United States and the Reform Party Statement of Principles.
- Section 6. Removal or Suspension of Official Recognition of a State Party Organization and removal or expiration of Provisional Recognition of a State Party Organization shall be such that:
 - a) Official Recognition of a State Party Organization may be removed by a two-thirds vote of the registered Delegates of the National Convention.
 - b) Official Recognition of a State Party Organization may be suspended by a two-thirds vote of the registered Delegates of the National Convention. Such suspension shall not exceed a period of six calendar months. Such suspension shall be imposed by means of a Resolution of the National Convention. Such a Resolution shall:
 - (1) specify the conditions under which the suspension shall be lifted,
 - (2) specify the end date of the suspension time period,
 - (3) specify the manner in which the fulfillment of such conditions shall be verified, and
 - (4) shall be subject to the provisions of this Constitution and subject to the provisions of the Bylaws.
 - c) The votes of National Committee Members and the votes of Delegates who are Members of a State Party Organization which is so suspended shall not be counted.
 - d) A State Party Organization which is so suspended and which fails to fulfill the conditions to lift such suspension shall automatically and immediately forfeit its Official Recognition upon the end date of such suspension.
 - e) Provisional Recognition of a State Party Organization may be removed by majority vote of the registered Members of the National Committee.
 - f) Provisional recognition of a State Party Organization shall automatically and immediately expire upon adjournment of the session of the National Convention which follows the date such Provisional Recognition was granted.
- Section 7. Each State Party Organization which has been granted Official Recognition or Provisional Recognition and each organization which requests Official Recognition or Provisional Recognition shall:
 - a) provide the Executive Committee with true, current and complete copies of its Constitution,

- Bylaws and/or Rules and copies of all legally required state and federal reports.
- b) provide the Executive Committee with any such additional information the Executive Committee similarly requests of all State Party Organizations or organizations.
 - c) pay dues, fees and assessments such as is provided in this Constitution and such as may be provided in the Bylaws.
- **Section 8.** A State Party Organization which has been granted Official Recognition or Provisional Recognition shall be eligible to receive all the Delegate seats which are available to be allocated to the State Party Organization so recognized. A State Party Organization and the members of such State Party Organization so recognized shall be eligible to participate without restriction in the national affairs of the Reform Party including all sessions of the National Convention and all national committees subject to the provisions of this Constitution, subject to the provisions of the Bylaws and Section 6 of this Article except that:
 - a) a Member of a State Party Organization which has been granted Provisional Recognition shall not be eligible to be elected as a National Officer.
 - b) each Delegate or National Committee Member of a State Party Organization which has been granted Provisional Recognition shall not be entitled to vote on questions pertaining to Official Recognition or Provisional Recognition of his or her own State Party Organization.
 - **Section 9.** State Party Organizations shall be subject to the laws of the State in which the State Party Organization is organized, the provisions of this Constitution, the provisions of the Bylaws, the proper directives of the National Officers, the proper directives of the Executive Committee, the proper directives of the National Committee and the Resolutions and proper actions of the National Convention.
 - **Section 10.** A State Party Organization shall, as a condition of continuing recognition, have no less than one-fourth of its registered Delegates in attendance at each session of the National Convention. A State Party Organization shall allow none of its National Committee seats to remain vacant for more than sixty days from the effective date of a written resignation, removal from position or second absence from a National Committee Meeting if such absences have not been excused by the Executive Committee.
 - **Section 11.** Individual Reform Party Member participation rights shall be such that:
 - a) In a state which has no State Party Organization such as is provided for in this Constitution, a person who identifies himself or herself as a Reform Party member shall have no Reform Party participatory rights except such rights as are accorded to any other citizen.
 - b) In a state which has an Officially Recognized or Provisionally Recognized State Party Organization, a person who identifies himself or herself as a Reform Party Member but does not also identify himself or herself as a member of his or her state's State Party Organization shall have no participatory rights except such rights as are accorded to any other citizen.
 - c) Citizens of states which have no State Party Organization who express an interest in establishing a State Party Organization in their state shall be listed by the Executive Committee. Such a list shall be provided to other similarly interested citizens of such state upon the request of such citizens until such time as a State Party Organization is established in such state.

ARTICLE X

General Provisions

- **Section 1.** All financial reports and all budget reports, given or approved by any Reform Party Committee or any Reform Party Officer, shall be prepared in keeping with the Generally Accepted Accounting Principles as are established by the Financial Standards and Accounting Board.
- **Section 2.** No dues, fees, financial assessments, administrative fees, subscription fees or member fees shall be implemented or required which are not specifically provided for in this Constitution or the Bylaws.
- **Section 3.** No Reform Party Officer shall be compensated for services rendered to the Reform

Party except for reimbursement of legitimate personal expenses incurred in the performance of one's official Reform Party duties.

- Section 4. The minutes of all Reform Party meetings shall be available upon request.
- Section 5. There shall be no proxy voting or voting by proxy.
- Section 6. Definitions of certain words used in this Constitution shall be such that:
 - a) The words "Party" and "Reform Party" shall mean the Reform Party of the United States of America.
 - b) The words "Reform Party Member" and "Member" shall mean any person eligible to vote in the next election of the President of the United States who identifies himself or herself as a member of the recognized State Party Organization in his state of residence and meets such requirements as provided in the Rules of their State Party Organization.
 - c) The words "State Party Organization" shall mean an organized body of citizens which has been granted Official Recognition or Provisional Recognition such as is provided in this Constitution and such as may be provided in the Bylaws. The recognized Party Organization in the District of Columbia shall also be identified as a "State Party Organization" with one (1) Congressional District. U.S. Territories and Possessions establishing Party Organizations shall each, upon recognition, also be identified as a "State Party Organization" with one National Committee Member and one Congressional District Delegate for a total of two National Convention Delegates.
 - d) The words "mail", "by mail" or "mailed to" shall mean delivery of a written document or documents via the First Class Mail service of the United States Postal Service or delivery of written documents via a delivery service that is as reliable or more reliable and that is as fast or faster than that of the First Class Mail service of the United States Postal Service.
 - e) The words "vote by mail" shall include fax or other electronic means such as email provided the response can be reliably verified as originating from the qualified voting individual.
 - f) The words "proper" or "property" shall mean in keeping with all applicable provisions of this Constitution, in keeping with all applicable provisions of the Bylaws and in keeping with all applicable provisions of the rules of State Party Organizations.
 - g) The word "meeting" shall also include teleconferences, video conferences, computer conferences or other electronic means allowing for direct interaction by the qualified participants and for which official minutes are taken or a transcript is made documenting the participants and any actions taken.
- Section 7. No person shall hold any position provided for in this Constitution who is not a Member of a Recognized State Party Organization.
- Section 8. Honorary titles or positions may be conferred upon individuals by Resolution of the National Convention.
- Section 9. The publication and distribution of this Constitution and the Bylaws shall be such that:
 - a) This Constitution and the Bylaws shall be published and distributed in writing in the format and type style herein indicated or in other such formats and type styles as may be provided by proper action of the Executive Committee.
 - b) When distributed, the Bylaws shall be attached to this Constitution and this Constitution, the Bylaws and any amendments thereto shall be bound together in their entirety under a cover entitled "The Constitution and Bylaws of the Reform Party of the United States of America."
 - c) A title page and a table of contents for this Constitution and a title page and a table of contents for the Bylaws may be included under the cover entitled "The Constitution and Bylaws of the Reform Party of the United States of America." Such title pages and such tables of contents shall not be deemed part of this Constitution and shall not be deemed part of the Bylaws. Such title pages shall indicate the effective dates of this Constitution, the Bylaws and any amendments thereto.
 - d) The pages of this Constitution, the pages of the Bylaws and the pages of any amendments thereto may be numbered. Such page numbering shall not be deemed as part of the text of this Constitution, the Bylaws or any amendments thereto.

e) Any amendments to this Constitution shall be attached to the final page of this Constitution and any amendments to the Bylaws shall be attached to the final page of the Bylaws until such time as the Executive Committee provides for the publication of this Constitution and/or the publication of the Bylaws as amended.

f) There shall be no introductory information, preface, reader's guide, letters by National Officers or any other such information pertaining to this Constitution and pertaining to the Bylaws distributed under the cover entitled "The Constitution and Bylaws of the Reform Party of the United States of America."

- Section 10. The provisions of this Constitution and the provisions of the Bylaws shall be deemed severable and separately enforceable. Should any Article, Section, sub-section or provision of this Constitution or of the Bylaws be invalidated or declared void, all other provisions of this Constitution and all other provisions of the Bylaws shall remain in full force and effect.
- Section 11. The interpretation, meaning and effect to be given the provisions of this Constitution and to be given the provisions of the Bylaws shall not be inconsistent with federal law.

ARTICLE XI

Bylaws

- Section 1. There may be Reform Party Bylaws. The Bylaws shall be such that:
 - a) The provisions of the Bylaws shall be subject to the provisions of this Constitution. In a case such that a provision or provisions of the Bylaws are in conflict with a provision or provisions of this Constitution, the provision or provisions of this Constitution shall prevail and the provision or provisions of the Bylaws which so conflict shall be deemed null and void.
 - b) The Bylaws shall be consistent with the Principles and Object of the Reform Party and consistent with the provisions of this Constitution.
 - c) The Bylaws shall have Articles and Sections which are similar in form, number, title and topic to the Articles and Sections of this Constitution. The Bylaws may contain additional Articles and additional Sections to address topics not addressed in this Constitution.

Resolutions

ARTICLE XII

Parliamentary Authority

- The rules contained in the current edition of Robert's Rules of Order, Newly Revised shall govern this convention in all cases to which they are applicable and are not inconsistent with any Rules, Bylaws, Constitution or resolutions adopted by the National Convention or National Committee.

ARTICLE XIII

Amendment

- This Constitution may be amended by a two-thirds vote of the National Convention provided that thirty (30) days previous notice and a precise written copy of the motion to amend this Constitution, such motion may not be amended, is provided to each registered Delegate.

b

DECLARATION OF GERALD M. MOAN

I, Gerald M. Moan, declare and state as follows:

21.04.403.2460

1. Pursuant to the Reform Party Constitution, a National Committee meeting may be called by the National Party Chair or by action of one-fourth of all National Committee members. More than 30 days prior to the Reform Party's Nominating Convention held in Long Beach, California, more than one-fourth of the National Committee members called for a National Committee meeting to be held in Long Beach on August 8, 2000. Pursuant to proper notification, the National Committee meeting was convened at 10:00 on August 8, 2000 at the Westin Hotel in Long Beach. In his sworn statements, Mr. Mangia does not dispute that the National Committee meeting was properly called.

2. As National Party Chairman, I called the meeting to order and seated as National Committee members all persons who had been certified (as of August 2, 2000) as National Committee members on the then-official Reform Party website by then Secretary Mangia. Approximately 160 National Committee members were seated.

3. After the National Committee members were seated, Mr. Mangia stated that approximately 120 members were challenged even though he himself had certified the list of National Committee members only days before the Long Beach meeting. This assertion of challenge to the seating and certification of National Committee members was made without documentation or verification. Although a state-by-state roll was taken, Mr. Mangia asserted that anyone who was challenged could not be counted, and he declared that there was not a quorum because there were only approximately 40 delegates in attendance who had not been

challenged. I refused to accept Mr. Mangia's absurd position, and the approximately 160 National Committee members voted overwhelmingly to uphold my ruling that a quorum of the National Committee members were present.

4. At the same meeting, I later ruled that every delegate could vote on any challenge to the verification and seating of National Committee members, as long as the challenge did not involve their respective state members. Again, the 160 members of the National Committee overwhelmingly upheld my ruling on this issue.

5. Unhappy with these rulings of the Chair and the National Committee, Mr. Mangia, and the 22 National Committee members who supported him left the room.

6. The meeting proceeded to hear challenges from the floor. The National Committee resolved all of those challenges, thereby ending the credentialing process of the National Committee. The National Committee Meeting was then opened for substantive business. Included in the business portion of the meeting was a resolution by the National Committee members that all resolutions of the Executive Committee dated from July 5, 2000 until the meeting of the National Committee, including the July 29, 2000 resolutions of the Executive Committee (one of which attempted to invalidate the candidacy of Patrick J. Buchanan), were void *ab initio*.

7. The Nominating Convention opened on Thursday, August 10, 2000. While the Reform Party administrative staff was in the process of issuing credentials to delegates, the main convention meeting room was not yet opened. Mr. Mangia and others attempted to force their way into the locked room, which attempt was stopped by Convention Center security and members of the Long Beach Police Department. After that, supporters of Mr. Hagelin staged

another demonstration, which was again controlled by Convention Center security and the Long Beach police department. The Hagelin supporters then left the Convention Center.

8. I called the Nominating Convention to order. The National Convention heard and resolved all challenges to the credentialing for the Convention. The Hagelin supporters never made any attempt to attend the Convention or to be heard on any challenges to the credentialing process or the seating of delegates. Thereafter, the Convention was open for substantive business without any further attempt at participation by the Hagelin supporters who thereby waived their right to challenge any of the ruling of the National Convention.

9. Prior to the Nominating Convention, Reform Party members participated in a mail-in nominating procedure. As the supreme governing body of the Reform Party, and pursuant to a motion made by the requisite number of the State Delegations, the Convention, which I chaired, voted by more than a two-thirds vote of the delegates to disregard the results of the mail-in procedure, and instead nominated Patrick J. Buchanan as the Presidential candidate by a roll call vote of the Convention delegates. Ezola Foster was nominated as the Party's Vice-Presidential candidate.

10. Pursuant to the Constitution, the National Convention also elected its National Officers: Gerald Moan as Chairman; Frank Reed as Vice Chairman; Philip Alexander as Secretary; and Thomas McLaughlin as Treasurer. James Mangia was recalled as the Secretary.

11. Upon information and belief, Mr. Mangia, Mr. Hagelin and others acting in concert with him, gathered across the street from the Reform Party Nominating Convention.

12. During the course of this gathering, the participants obtained the mail-in ballots which resulted from the mail-in nominating process. The gathering proceeded to count the mail-in votes, and Patrick J. Buchanan won by a margin of approximately 2 to 1. Upon information and belief, unhappy with that result, the gathering simply invalidated every Buchanan vote, and declared Mr. Hagelin the winner of the mail-in voting, and purported to nominate Mr. Hagelin as "Reform Party" Presidential candidate.

I declare and affirm that the foregoing is true and correct under penalty of perjury.

Dated: September 5, 2000

Gerald M. Moan
Gerald M. Moan

21-07403-2463



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**Rules for the Selection of Reform
Party of the United States
Nominees for President and
Vice-President of the United
States**

Approved at the Atlanta Convention September 25 - 27, 1998
Revision: July 23, 1999 Dearborn, MI.

Section I. General Provisions and Definitions

- Section 1. General Provisions and Definitions
- Section 2. Authorized Committees
- Section 3. Qualifying for the Reform Party Presidential Primary
- Section 4. The Reform Party Presidential Primary and Selection of the Reform Party Presidential Nominee
- Section 5. Selection of the Reform Party Vice-Presidential Nominee
- Section 6. Appeals
- Overview
- History - F.A.Q.
- Becoming a Candidate
- General overview of ballot status

(1) These rules shall govern the selection process for the Reform Party of the United States in nominating its candidates for President and Vice-President of the United States to the extent that they are not inconsistent with the Constitution of the Reform Party of the United States.

(2) These rules may be amended under the following provisions:
(a) These rules may be amended by majority vote of the National Convention.
(b) These rules may be amended by two-thirds (2/3) vote of the National Committee.
(c) Notwithstanding provisions I-(2)(a) and I-(2)(b) above, these rules may not be amended in the presidential election year.

(3) For purposes of these rules, the following definitions shall be used:
(a) "Ballot access" shall mean that no substantial barriers exist for the Party to place the nominees of the Party for President and Vice-President of the United States on a given state's general election ballot.

(b) "Executive Committee" shall mean the Executive Committee of the Reform Party of the United States.
(c) "National Committee" shall mean the National Committee of the Reform Party of the United States. (d) "National Convention" shall mean the National Convention of the Reform Party of the United States.
(e) "Party" shall mean the Reform Party of the United States.
(f) "Presidential election year" shall mean the calendar year in which the November general election for President of the United States is held. (g) "Primary" shall mean the Reform Party Presidential Primary as described in Section IV of these rules.
(h) "Primary Candidate" shall mean a candidate who has qualified for the Reform Party Presidential Primary in accordance with Section III of these rules.
(i) "State Delegation" shall mean the Delegates of the National Convention from a given state that represent a State Party, as defined by I-(3)(i).
(j) "State Party" shall mean an Affiliated State Party or an Affiliated State Party Organization recognized by the Reform Party of the United States in accordance with the Constitution of the Reform Party of the United States.

(4) The nominees of the Party for President and Vice-President of the United States shall be allowed to address the National Convention for forty-five (45) minutes each in order to accept their respective nominations.

(5) The Presidential Nominations Committee shall establish a common digital format for electronic data that will be used within the Reform Party Presidential Nomination Process. The Presidential Nominations Committee shall make this common digital format known no later than December 20 of the year immediately preceding the presidential election year.

(6) Each State Party shall submit to the Presidential Nominations Committee an electronic copy of the names and addresses of the registered voters who are members of the given State Party and voters contacting the State Party specifically requesting to participate in the Reform Party Presidential Primary. The electronic copies must be in the authorized common digital format as proscribed for in I-(5). The deadline for the submission of this electronic list shall be July 1 of the presidential election year.

Section II. Authorized Committees

(1) Not later than July 1 of the year immediately preceding the presidential election year, the Executive Committee shall establish a Convention Committee to oversee the functions relating to the meeting of the National Convention in the presidential election year. The activities and decisions of the Convention Committee shall be reported to the Executive Committee.

(2) Not later than July 1 of the year immediately preceding the presidential election year, the National Committee shall establish a Presidential Nominations Committee to regulate the presidential nomination process held in the presidential election year in accordance with these rules. The Presidential Nominations Committee shall have the authority to establish regulations and take such actions as are necessary to implement these rules. The activities and decisions of the Presidential Nominations Committee shall be reported to the Executive Committee. Changes in the membership and size of the Presidential Nominations Committee shall be by unanimous vote of the Presidential Nominations Committee.

(3) The officers of the Party shall be ex-officio members of the Convention Committee and the Presidential Nominations Committee.

(4) The Convention Committee and the Presidential Nominations Committee shall have the authority to establish subcommittees to perform their respective functions as they deem appropriate.

(5) No individual may serve as a member of the Convention Committee or the Presidential Nominations Committee who publicly supports or opposes any individual or candidate for the nomination of the Party for President or Vice- President of the United States.

Section III. Qualifying for the Reform Party Presidential Primary

(1) The Executive Committee shall compile a list of states for which the Party does not have ballot access in the presidential election year. This list shall be made available no later than July 1 of the year immediately preceding the presidential election year. The Presidential Nominations Committee shall have the authority to remove a state from the list by unanimous vote

(2) To qualify for the Primary, candidates shall be required to qualify for the ballot as an independent candidate for President of the United States in states contained in the list compiled in accordance with III-(1).

(3) In order for a candidate to be considered to have qualified for the ballot as an independent candidate for President under these rules, evidence must be provided to the Presidential Nominations Committee that the candidate has either:

- (a) been certified by a given state to have the candidate's name placed on the general election ballot as an independent candidate for President, or
- (b) fulfilled a significant portion of the requirements to have the candidate's name placed on the general election ballot as an independent candidate for President in states where the date for certification falls after July 1.

The Presidential Nominations Committee shall specify the exact requirements for each state which fall under III-(3)(b) no later than November 1 of the year immediately preceding the presidential election year and such requirements shall be approved by unanimous vote. If a unanimous vote is not achieved for such requirements, the requirements shall be set to zero.

(4) Any candidate may submit to the Presidential Nominations Committee an electronic copy of the names and addresses of registered voters who have signed petitions either to be included in the Primary or to qualify the candidate for the ballot in accordance with III-(3). The electronic copies must be in the authorized common digital format as proscribed for in I-(5). The deadline for the submission of this electronic list shall be July 1 of the presidential election year.

(5) A candidate is considered to have qualified for the Primary if the candidate has qualified for the ballot as an independent candidate for President in accordance with III-(3) in states which comprise at least a majority of electoral votes from all states contained in the list compiled in accordance with III-(1). The Presidential Nominations Committee shall announce the candidates who have qualified for the Primary on July 2 of the presidential election year.

(6) Two or more candidates may enter into a compact stating that if one candidate of the compact receives the nomination, the other candidates of the compact agree to substitute the name of the nominee on all ballot lines within the compact. The Presidential Nominations Committee shall have the authority to consider one candidate within the compact qualifying for the ballot in accordance

with III-(3) as all candidates within the compact qualifying for the ballot.

Section IV. The Reform Party Presidential Primary and Selection of the Reform Party Presidential Nominee

(1) The Reform Party Presidential Primary shall be held between July 4 of the presidential election year and the meeting of the National Convention in the presidential election year.

(2) A primary ballot shall be distributed to the following registered voters of the United States:

- (a) voters who are members of State Parties as identified by lists provided to the Presidential Nominations Committee in accordance with I-(6).
- (b) voters signing petitions submitted by candidates in accordance with III-(4)
- (c) voters contacting the various State Parties specifically requesting to participate in the Reform Party Presidential Primary as identified by lists provided to the Presidential Nominations Committee in accordance with I-(6). The Presidential Nominations Committee shall take such actions in order that no individual receives more than one primary ballot.

(3) Each candidate who is considered to have qualified for the Primary shall be considered a Primary Candidate.

(4) The names of the Primary Candidates on the primary ballot shall appear in a random order as determined by the Presidential Nominations Committee. The random determination of the order of the names shall be open and representatives for each Primary Candidate shall be allowed to observe.

(5) The primary ballot shall consist of:

- (a) the names of Primary Candidates in accordance with IV-(4)
- (b) columns labeled "First Choice", "Second Choice", and "Third Choice" next to each of the Primary Candidates' names
- (c) an identification number for the ballot

(1) The identification number shall be used within the Reform Party Presidential Nomination Process solely to determine the validity or invalidity of the cast ballot and to determine the state of residence of the voter casting the ballot.

(2) No efforts shall be made to use the identification numbers to identify or record how certain individuals voted within the Primary.

(6) The Presidential Nominations Committee shall construct the primary ballot in such a manner as to provide an efficient manner of tallying the votes cast in accordance with these rules.

(7) For a vote to be considered valid within the Primary, the vote must be received by the Presidential Nominations Committee:

- (a) prior to the start of the Reform Party National Convention, and
- (b) in person, by mail, by phone, or by internet in a manner proscribed by the Presidential Nominations Committee in accordance with these rules.

(8) Votes within the Primary shall be recorded as follows:

- (a) Primary votes cast with a valid identification number shall be recorded.
- (b) Primary votes cast without a valid identification number or with an invalid identification number shall not be recorded.
- (c) From the total number of recorded votes, the number of votes from each state shall be recorded.
- (d) Within the recording of votes from each state, the number of votes cast for each Primary Candidate as "First Choice" shall be recorded.
- (e) Within the recording of votes for each Primary Candidate as "First Choice", the number of votes cast for each Primary Candidate as "Second Choice" shall be recorded.
- (f) Within the recording of votes for each Primary Candidate as "Second Choice", the number of votes cast for each Primary Candidate as "Third Choice" shall be recorded.

(9) The votes cast for each Primary Candidate from a given state in a given round of voting shall be determined as follows:

- (a) In the first round of voting, each Primary Candidate shall receive all votes recorded for the given Primary Candidate as "First Choice".
- (b) If the current round of voting is a runoff round, the Primary Candidate receiving the lowest number of votes in the previous round is eliminated from the runoff.
- (c) In runoff rounds of voting, each remaining Primary Candidate shall receive all votes recorded for the given Primary Candidate as the highest choice among the remaining Primary Candidates. For purposes of this section, "First Choice" is considered a higher choice than "Second Choice" and "Third Choice", and "Second Choice" is considered a higher choice than "Third Choice".
- (d) All votes recorded in which none of the Primary Candidates in the current round of voting are

selected as "choices" shall not be counted towards calculating the majority of the votes cast.

(10) Results of the Primary shall be announced during the Reform Party National Convention at a time set by the approved agenda of the Convention as follows unless the Primary is overridden in accordance with IV-(11):

(a) Representatives from each State Party shall announce from the floor of the Convention the number of primary votes cast from their state for each Primary Candidate as provided by the Presidential Nominations Committee in accordance with IV-(9). If a discrepancy arises between the number of votes announced and the number of votes cast by the Presidential Nominations Committee, the number of votes cast shall take precedence.

(b) If no Primary Candidate receives at least a majority of the votes cast in any round of voting, the Convention Chair shall announce that a runoff shall take place in accordance with these rules. The results of the next round of voting shall be announced as proscribed in IV-(9)(a) no earlier than thirty (30) minutes following the announcement of the runoff.

(c) If a Primary Candidate receives at least a majority of the votes cast in any round of voting, the Convention Chair shall announce that the Primary Candidate receiving at least a majority of the votes cast in the Primary is the nominee of the Party for President of the United States.

(11) The process of selecting the nominee of the Party for President of the United States by the Primary shall be overridden only as provided for in this section.

(a) A motion to override the Primary shall be considered in order if either of the following conditions are met:

(1) the Secretary of the Party has received certified resolutions from the governing bodies of at least a majority of State Parties making such a motion to override.

(2) the Chair of the Convention has received resolutions from at least a majority of the State Delegations making such a motion to override. A motion to override the Primary shall be considered out of order if neither IV-(11)(a)(1) nor IV-(11)(a)(2) are met. A motion to override the Primary may not be reconsidered.

(b) The Primary shall be overridden if the motion to override is approved by a two-thirds (2/3) vote of the National Convention.

(c) If the Primary is overridden, the selection of the Party's nominee for President of the United States shall be conducted in accordance with the rules for selecting the Party's nominee for Vice-President of the United States.

(12) Each Primary Candidate shall be allowed to address the National Convention for a period not to exceed thirty (30) minutes.

(13) Each Primary Candidate shall be allowed to provide a photograph and a five-hundred (500) word statement for inclusion within the primary ballot. The photograph and statement shall be received by the Presidential Nominations Committee no later than July 1 of the presidential election year.

(14) In the case of a tie, the breaking of the tie shall be determined by the National Convention.

Section V. Selection of the Reform Party Vice-Presidential Nominee

(1) The selection of the Party's nominee for Vice-President of the United States shall be conducted during the Reform Party National Convention at a time no earlier than eight (8) hours following the nomination of the Party nominee's for President of the United States. The Party nominee's for Vice-President of the United States shall be selected by the National Convention.

(2) Nominations for Vice-President shall be taken on the floor from Delegates of the National Convention and shall require a second.

(3) In each round of voting, the Convention Chair shall call the roll of the states. Upon the announcement of a state, a Delegate from that state delegation shall announce the number of Delegate votes for each of the candidates for Vice-President.

(4) If no candidate receives at least a majority of the votes cast in any round of voting, the Convention Chair shall announce a runoff. If a runoff is announced, the Vice-Presidential candidate with the lowest number of votes is removed from the next round of voting.

(5) If a candidate receives at least a majority of the votes cast in any round of voting, the Convention Chair shall announce that the candidate receiving at least a majority of the votes cast is the nominee of the Party for Vice- President of the United States.

Section VI. Appeals

(1) A candidate may appeal a decision of the Presidential Nominations Committee to the Executive Committee if five (5) members of the Executive Committee agree to hear such an appeal. If five (5) members of the Executive Committee do not agree to hear such an appeal within twenty (20) days of the initial presentation of the appeal, the appeal shall be considered rejected.

(2) Any appeal must be in writing and shall be limited to the contents of the appeal.

(3) Upon agreeing to hear an appeal, the Executive Committee shall take such necessary action to resolve any appeal which does not violate these rules, the Constitution of the Party, or federal law.

Minutes of Presidential Nominations Committee meeting . July 28, 2000

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(Cite as: 89 F.Supp.2d 751)

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United States District Court,
W.D. Virginia,
Lynchburg Division.

**REFORM PARTY OF THE UNITED STATES OF
America, et. al., Plaintiffs,**

v.

**John J. GARGAN, et. al., Defendants.
Reform Party of the United States Of America,
et. al., Plaintiffs,**

v.

Russell J. Verney, et. al., Defendants.

Nos. 6:00CV00014, 6:00CV50012.

March 27, 2000.

Ousted chair and treasurer of national political party sued party, challenging validity of procedure by which chair and treasurer were removed from their positions. Replacements sued to enjoin claimants from interfering with their conduct of party affairs. The District Court, Moon, J., held that: (1) meeting of national committee of party, at which decision to oust chair and treasurer was made, was validly called; (2) notice given was adequate, despite noncompliance with resolution that agenda be presented 30 days in advance of meeting; (3) ousted chair acted improperly by refusing to call meeting to order; and (4) delegates to meeting were properly credentialed.

Order accordingly.

West Headnotes

[1] Parliamentary Law ⇨ 1
286k1

Courts do not generally concern themselves with question whether group has followed parliamentary rules in holding meetings.

[2] Elections ⇨ 121(1)
144k121(1)

Meeting of national committee of political party was validly called, pursuant to party's constitution, when requested by one-fourth of members of committee, even though later meeting of executive committee which also called for meeting was allegedly not legally constituted.

[3] Elections ⇨ 121(1)
144k121(1)

Members of national committee of political party were given adequate notice of meeting, when notified by e-mail 30 days in advance with proposed agenda submitted two weeks prior to meeting, even though committee had passed resolution calling for publication of agenda 30 days prior to meeting.

[4] Associations ⇨ 18
41k18

Presiding officers of association cannot arbitrarily defeat the will of a body by refusing to entertain motions or permit expression of the majority's will.

[5] Elections ⇨ 121(1)
144k121(1)

Chair of national committee of political party improperly contravened will of majority of members present when he refused to call meeting to order, and was consequently absent from meeting despite his physical presence, allowing vice chair to call meeting to order.

[6] Elections ⇨ 121(1)
144k121(1)

In resolving dispute regarding credentials of delegates to political party convention, court is limited to determining whether rules and constitution of party were followed.

[7] Elections ⇨ 121(2)
144k121(2)

Delegates to meeting of national committee of political party were properly credentialed, in accordance with rules and constitution, and vote ousting national party chair and treasurer was consequently valid; claims of rival delegates from states were in some cases settled in advance of meeting, and in others were resolved by failure to oppose contested delegation.

*752 Dale A. Cooter, Cooter, Mangold, Tompert & Wayson, P.L.L.C., Washington, DC, for Reform Party of the U.S., Russell J. Verney.

Tracey A. Lenox, Lenox, Biddinger & Conrad, PC.

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Woodbridge, VA, for John J. Gargan, Reform Party of the U.S.

Stephen E. Hershkowitz, Richard B. Bader, Robert W. Bonham, III, Federal Election Commission, Washington, DC, for Federal Election Com'n, amicus.

OPINION

MOON, District Judge.

John J. Gargan and Pat Choate each claim to be the Chair of the Reform Party of the United States of America (hereinafter "Reform Party" or "Party"). Gargan and his ally Ronn Young were elected National Party Chair and Treasurer, respectively, at a National Convention in Dearborn, Michigan in July, 1999 (hereinafter "Dearborn Convention"). Choate claims to be the National Party Chair by virtue of a vote of more than two-thirds of the Party's National Committee on February 12, 2000 in Nashville, Tennessee (hereinafter "Nashville Meeting"), which recalled Gargan and Young and elected Choate and Tom McLaughlin as Interim Party Chair and Treasurer, respectively. Young filed suit in the United States District Court for the Western District of Virginia, Harrisonburg Division, seeking among other things for the Court to order Russell Verney, Gerald Moan, and various other individuals aligned with Choate (hereinafter "Choate group") to cease interfering with the administration of Gargan and Young (hereinafter "Gargan group") in their operation of the Reform Party. The Choate group filed suit against the Gargan group in the United States District Court for the Western District of Virginia, Lynchburg Division, seeking *753 among other things for the Court to enjoin the Gargan group from interfering with the Choate group's operations of the Reform Party.

On February 24, 2000, this Court, in the Lynchburg case, ordered the Gargan group to pay into the registry of the Court approximately \$2.5 million in federal money it had received from the Federal Election Commission (hereinafter "FEC" or "Commission") to be held preliminarily until a decision as to the rightful leadership of the Party could be determined at a trial to begin on March 22, 2000. On March 13, 2000, the Harrisonburg and Lynchburg cases were consolidated for trial. On March 16, 2000, this Court bifurcated the case for

trial purposes, ordering that only the issue of the rightful leadership of the Reform Party would be heard beginning on March 22 and postponing until a later date a trial (if necessary) on subsequent damages.

The essential question before this Court is whether the February 12, 2000 Nashville Meeting, purporting to be a meeting of the National Committee of the Reform Party at which Gargan and Young were recalled as officers, was a duly constituted meeting of the National Committee with the power to take such actions? The Gargan group maintains that the meeting was not a duly constituted meeting with authority to remove him as National Party Chair for the following reasons:

1. The Nashville Meeting was called as an invalid meeting of the Executive Committee,
2. The National Committee membership was not given proper notice of the meeting,
3. Gargan, the Chair who was present at the Nashville Meeting, refused to call the meeting to order, and
4. There were not enough properly credentialed National Committee members to remove Gargan and Young by a two-thirds vote of all registered members.

The Court concludes that the February 12, 2000 Nashville Meeting was called at the request of one-fourth of members of the National Committee, that reasonable notice was given of this meeting, that the meeting was properly called to order and presided over by the Party's Vice Chair, and that more than two-thirds of the registered members of the National Committee voted to recall Gargan and Young and to elect Choate and McLaughlin to succeed them as National Party Chair and Treasurer, respectively. Therefore, the February 12, 2000 Nashville Meeting was a duly constituted meeting of the Reform Party National Committee with authority to remove its officers and elect new ones.

JURISDICTION

This Court has diversity jurisdiction pursuant to 28 U.S.C. § 1332 and federal question jurisdiction pursuant to 28 U.S.C. § 1331, in that this matter arises under the Federal Election Campaign Act of 1971, 2 U.S.C. § 431, et seq. Venue properly rests in this Court pursuant to 28 U.S.C. § 1391(a)(2) and (3).

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FINDINGS OF FACT

1. The Reform Party of the United States of America is a national political party organization registered with the Federal Election Commission. The Reform Party is a minor party, which is defined as a political party "whose candidate for the office of President in the preceding presidential election received, as the candidate of such party, 5 percent or more, but less than 25 percent of the total number of popular votes received by all candidates for such office." 26 U.S.C. § 9002(7); 11 C.F.R. § 9008.2(d).

2. As a minor party, the Reform Party is entitled to federal funding of its quadrennial presidential nominating convention under the Presidential Election Campaign Fund Act. See 26 U.S.C. § 9008. Under funding formulas set forth by statute and FEC regulations, the Reform Party was entitled to \$2,468,921 in convention funds. See 26 U.S.C. § 9008(b)(2); 11 C.F.R. § 9008.4(b).

*754 3. To qualify for entitlement and to receive benefits, minor political parties must establish a Convention Committee, which in turn must register with the FEC as a political committee pursuant to 11 C.F.R. part 102. See 26 U.S.C. § 9008(b)(3); 11 C.F.R. § 9008.3(a). The Party's National Committee must file an application statement containing certain information prescribed by the Commission at 11 C.F.R. § 9008.3(a)(3). By letter, the Convention Committee must agree to certain conditions set forth at 11 C.F.R. § 9008.3(a)(4). That section further provides that the agreement is also binding upon the National Committee.

4. The Reform Party is governed by a constitution that was adopted on November 2, 1997. The constitution specifically states that "[t]he rules contained in the current edition of Robert's Rules of Order, Newly Revised, shall govern this convention in all cases to which they are applicable and are not inconsistent with any Rules, Bylaws, Constitution or resolutions adopted by the National Convention or National Committee." Art. XII. The Reform Party has not passed any bylaws.

5. The Reform Party constitution provides for a National Convention, which shall be "the supreme governing body of the Reform Party at the national level." Art. III, § 9(a). Under the National

Convention is a National Committee, which shall be "responsible for the conducting of the business and affairs of the Reform Party between sessions of the National Convention." Art. IV, § 1. Under the National Committee is an Executive Committee, which shall be "responsible for the conducting of the day to day business and affairs of the Reform Party, between meetings of the National Committee." Art. V, § 1.

6. The Reform Party constitution also provides for the National Party Officers of Chair, Vice Chair, Secretary, and Treasurer. Art. VIII, § 1. Among other duties, the National Party Chair presides over meetings of the Executive Committee, National Committee, and National Conventions. Art. VIII, § 2(a). The Party's constitution provides that the Vice Chair shall serve as the National Party Chair in the Chair's absence. Art. VIII, § 2(b). The Party's Secretary performs many functions, including recording the proceedings of all meetings and providing official notice of all meetings of the Executive and National Committees and the National Convention. Art. VIII, § 2(c). Any National Officer may be removed by a two-thirds roll call vote of the registered members of the National Committee. Art. VIII, § 6(a). The four National Party Officers, along with seven regional representatives, comprise the Executive Committee. Art. V, § 2.

7. A Reform Party National Convention was held on July 23-25, 1999, in Dearborn, Michigan. The Dearborn Convention elected John J. Gargan to succeed Russell Verney as National Party Chair and Ronn Young to succeed Michael Morris as National Treasurer, both effective January 1, 2000. In addition, the Dearborn Convention elected Gerry Moan and Jim Mangia to serve as National Party Vice Chair and Secretary, respectively.

8. A National Committee Meeting was held immediately before the Dearborn Convention on July 23, 1999. At the National Committee Meeting, Sue Harris DeBauche (wife of Ronn Young) made a motion "that in the future a national committee agenda for the meeting be published 30 days prior to the meeting." The motion passed.

9. An Executive Committee meeting was convened on September 1, 1999, during which the committee elected to hold the Party's 2000 Nominating

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Convention in Long Beach, California rather than St. Paul, Minnesota. The convention site was chosen by a two-thirds majority vote of the eleven-member Executive Committee. However, the Long Beach site only received a passing two-thirds majority after two previous and unsuccessful votes. Also at that meeting, Young was unanimously appointed Chair and Treasurer (hereinafter "755 Chair/Treasurer") of the Party's 2000 Convention Committee, a special committee of the Reform Party formed to carry out the business of effectuating plans for the Reform Party's 2000 Presidential Nomination Convention (hereinafter "2000 Nominating Convention"). Under the Reform Party constitution, the chair of a special committee (such as the Convention Committee) shall be appointed by the National Party Chair. Art. VII, § 1(a).

10. By letter dated September 10, 1999, the Reform Party submitted an application statement to the FEC seeking federal funding for the Party's 2000 Nominating Convention. Verney, as the (lame-duck) National Party Chair, and Young, as Chair/Treasurer of the Convention Committee, also submitted a letter of agreements pursuant to 11 C.F.R. § 9008.3. On November 23, the FEC certified \$2,468,921 to the Secretary of the Treasury to be paid to the Reform Party 2000 Convention Committee pursuant to 26 U.S.C. § 9008(g) and 11 C.F.R. § 9008.6(d). The Party's Convention Committee received the funds on or about December 8 and deposited the money with First Citizens Bank in Martinsville, Virginia.

11. A National Committee meeting (conducted by mail ballot) was convened on November 29, 1999, at which the committee's members voted to hold the Party's 2000 Nominating Convention in St. Paul. However, the parties are in dispute as to whether a quorum existed at that meeting, and there is insufficient evidence in the record for this Court to make such a determination.

12. An Executive Committee meeting was held on December 16, 1999, at which concern was raised about the amount of time it was taking Young to sign a contract with the Long Beach Convention Center. The Executive Committee passed a motion that directed Young to sign a contract with Long Beach by December 23.

13. On December 28, 1999, the Executive

Committee determined that Young had not complied with their directive. While Young had signed a contract with the Long Beach Convention Center, he attached a letter which certain members of the committee believed undermined their dealings with Long Beach. In addition, Young sent to Long Beach a \$2,000 deposit when the Committee had agreed that \$12,000 was required. However, there was an addendum to the contract Young signed that held the Long Beach site open until January 10, 2000, so long as \$2,000 was deposited.

14. The Executive Committee voted to remove Young as Chair/Treasurer of the Convention Committee on December 28 and replaced him with Gerry Moan. In a letter dated December 30, 1999, Moan wrote to First Citizens Bank to inform them that he was the new Reform Party Convention Committee Chair/Treasurer. On the same date, Moan notified the FEC of the change in leadership of the Convention Committee.

15. On January 1, 2000, Gargan, Moan, Mangia, and Young assumed their positions as National Party Chair, Vice Chair, Secretary, and Treasurer, respectively. Immediately upon assuming the position of Chair, Gargan replaced Moan with Young as Convention Committee Chair/Treasurer. The Party's constitution provides that the Chair of a special committee (such as the Convention Committee) "shall be appointed by the National Party Chair." Art. VII, § 1(a). Moan received notice of Gargan's actions sometime during the first week of January, 2000. Despite his being removed as Chair/Treasurer of the Convention Committee and his acknowledged notice of his removal, Moan wrote a letter to the Long Beach Convention Center on January 11 notifying them that it was the intention of the majority of the members of the Party that the 2000 Nominating Convention be held in Long Beach.

16. An Executive Committee Meeting was held on January 9, 2000, at which the issue of the location of the Party's 2000 Nominating Convention arose. A heated debate ensued between certain members of the Executive Committee and Gargan "756 concerning the convention's proposed location. Gargan initially declared the November 29, 1999 vote of the National Committee to be valid and stated that he would direct Young to cancel the Party's contract with Long Beach. After much

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rancor, the Executive Committee voted on and unanimously approved an independent site selection committee as a compromise between Gargan and other members of the committee.

17. No later than January 13, 2000, National Secretary Mangia sent the following e-mail to all National Committee members:

I have received correspondence from more than 25% of National Committee members calling for an "in-person" meeting of the National Committee. According to the Reform Party Constitution this action requires that a meeting of the National Committee be set, to be held in person. I believe it is the responsibility of the Executive Committee to specify a time and place for the meeting.

A National Committee meeting may be called by the National Party Chair or by action of one-fourth of all National Committee members. Art. IV, § 6. Mangia had notice from more than one-fourth of National Committee members on or before January 13 requesting that a National Committee meeting be held.

18. In the meantime, a contract was signed with a convention center in St. Paul to host the Party's 2000 Nominating Convention. As a result, another Executive Committee meeting was held on January 18, 2000. After Moan called the meeting to order, Gargan stated that he believed the meeting was not legally constituted and left the call. [FN1] Young and DeBauche (a regional representative on the Executive Committee) also left the call. After the remaining committee members voted to proceed, Moan proposed to hold the National Committee meeting on February 12, 2000 in Nashville, Tennessee. The remaining Executive Committee members approved the motion by a vote of 6-1.

FN1. The January 18 Executive Committee meeting, like all of the other Executive Committee meetings referenced in this Opinion, was held via teleconference.

19. On January 19, 2000, Mangia mailed a call to National Committee members informing them that the Executive Committee had set the date and time of the Nashville National Committee meeting. The notice also included a proposed agenda for the Nashville Meeting, including the recall of Gargan, Moan, and Young.

20. Another Executive Committee meeting was held on February 2, 2000, at which a tentative agenda was unanimously approved for the Nashville Meeting. Gargan and Young were present at the meeting. In the meantime, Gargan issued a call for an emergency National Convention to be held in Las Vegas, Nevada from March 17-19, 2000 (hereinafter "Las Vegas Convention"). Gargan also sent two e-mails to National Committee members urging them not to attend the Nashville Meeting in order to deny it a quorum.

21. The day before the Nashville Meeting, Mangia formed an advisory committee of four people aligned with Gargan and four people aligned with Pat Choate to meet with him that night and review any challenges over the seating of National Committee members. Initially, eleven states were challenged. The challenged states were Alaska, Hawaii, Louisiana, Maryland, New Jersey, North Dakota, South Dakota, Tennessee, Virginia, West Virginia, and Wyoming. In each case, the committee evaluated the evidence and voted on recommendations for each challenge.

22. In the cases of Virginia and Ohio, two separate and competing groups of representatives wished to be seated; in Virginia, neither group was seated whereas in Ohio both groups resolved their conflict internally. In the case of Alaska, Mangia received a letter from a group of Reform Party members who could not attend due to the recent Alaska Airlines crash. Another competing group of Party members *757 from Alaska arrived instead. Mangia summarized the contents of the letter for the members in attendance at the Nashville Meeting, which ultimately voted to seat the Alaska representatives who had actually arrived. In the other eight states, the only challenge came from DeBauche within the advisory committee the night before the Nashville Meeting; there was neither a contest over which representatives from a given state were to be seated nor a challenge to their being seated at the Nashville Meeting itself. Representatives from the remaining eight states were all ultimately seated by the members in attendance at the meeting. All the representatives from the challenged states voted to recall both Gargan and Young.

23. The events that transpired immediately prior to the Nashville Meeting being convened can

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euphemistically be described as "boisterous." Gargan did not open the meeting but instead read a statement. When members in attendance requested that Gargan call the meeting to order, he stated that it was not a legal meeting and that he was not going to call it to order. Nevertheless, Gargan remained in the room at all times, though not always at the microphone. As Vice Chair, Moan then assumed the role of Acting Chair of the meeting and called the body to order. Subsequently, the National Committee passed a motion appointing Tom McLaughlin (who was considered to be more neutral than Moan) to be Acting Chair for the Nashville Meeting only. Votes were then held to remove Gargan, Moan, and Young.

24. The question arose about the meaning of the phrase "two-thirds roll call vote of the registered Members of the National Committee" as it relates to the removal of National Officers. Specifically, the question concerned whether the proper baseline was the 162 members at large (of whom two-thirds would be 108) or the 141 members actually in attendance at the Nashville Meeting (of whom two-thirds would be 94). The parliamentarian advised the Chair that the Party's constitution was ambiguous. The Chair ruled that the phrase meant at least 108 of the 162 at-large members. The Chair's ruling was objected to from the floor and upon advice of the parliamentarian the issue was submitted to the membership, which overruled the Chair by voting that the phrase meant two-thirds of the members registered at the meeting. The parliamentarian testified that this vote was in accord with the Party's constitution and Robert's Rules of Order.

25. The tally to remove both Gargan and Young was 109 votes in the affirmative, which is more than two-thirds of all members at large. [FN2] In addition, a separate vote was held in which Young was removed as Convention Committee Chair/Treasurer. Subsequently, Choate was elected to the position of Interim Chair and McLaughlin was elected to the position of Interim Treasurer. In addition, the National Committee reaffirmed Moan's December 28, 1999 appointment as Convention Committee Chair/Treasurer. Finally, the National Committee voted overwhelmingly not to hold the convention called by Gargan in Las Vegas and to ratify the Executive Committee's decision to hold the Party's 2000 Nominating Convention in Long Beach.

FN2. The vote to remove Moan was unsuccessful.

26. Gargan convened the Las Vegas Convention anyway, at which individuals were elected to the (theoretically vacant) positions of National Party Vice Chair and Secretary. The members of the Las Vegas Convention also elected to hold the Party's 2000 Nominating Convention in St. Paul. Finally, Gargan declared that twenty-five states had been constitutionally decertified for their failure to send the proper number of delegates to the Las Vegas Convention.

CONCLUSIONS OF LAW

[1] 27. Generally, courts do not concern themselves with whether parliamentary *758 rules are followed; instead, courts are concerned with whether the law of the land is followed. See 59 Am.Jur.2d Parliamentary Law § 4 (1987). Here, a parliamentarian who was employed to advise the Nashville Meeting and who was duly qualified as an expert testified without objection that the meeting was conducted according to the Party's constitution and Robert's Rules of Order. Keeping in mind the admonition above, we discuss the issues raised by the Gargan group.

The Nashville Meeting Was Called at an Invalid Meeting of the Executive Committee

[2] 28. The objection that the Nashville National Committee meeting was called by an invalid January 18, 2000 Executive Committee meeting is answered by the fact that the Nashville Meeting was called pursuant to the request of one-fourth of the members of the National Committee. Authority for this appears in the Party constitution, article IV, section 6. In his e-mail of January 13, 2000, National Secretary Mangia reported that he had the request for a meeting from one-fourth of the committee members and named the members. Therefore, the Nashville Meeting was not illegally called by the Executive Committee, since it was called prior to the January 18 Executive Committee meeting. Thus, this Court does not need to decide the validity of the January 18 Executive Committee meeting.

The National Committee Membership Was Not Given Proper Notice of the Meeting

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resolution itself, the interrelationship between the National Committee and National Convention under the constitution, and the functions of the National Committee all dictate that the resolution passed at Dearborn was at best aspirational. Anything greater (in this context) would require that a constitutional amendment be passed by a two-thirds vote of the National Convention. See art. XIII.

35. In addition, the leadership of the Party changed on January 1, 2000 and by that time there were different members of the National Committee than those who had met at Dearborn prior to the Dearborn National Convention. To allow the National Committee in Dearborn to control what would take place at National Committee meetings after January 1, 2000 would in effect violate Robert's Rules of Order and the spirit of the Party's constitution. Normally one body cannot bind the next. See Robert's Rules of Order, Ch. IV, § 8.

36. Accordingly, this Court concludes that the Nashville National Committee meeting did not violate the Party's constitution. Moreover, this Court notes that notice was reasonable and an agenda was sent out at least two weeks before the meeting. Thus, the Nashville Meeting was not invalid for failure of the National Committee members to be given an agenda thirty days prior to the meeting.

Gargan, the Chair who was Present at the Nashville Meeting, Refused to Call the Meeting to Order

[4, 5] 37. While this Court finds that the Nashville Meeting was properly called and a quorum of members attended, a question exists as to whether Gargan (as National Party Chair) was acting within his authority to refuse to call the meeting to Order. This Court finds that he was not.

*760 38. The Reform Party constitution requires the National Party Chair to preside over meetings of the National Committee. Art. VIII, § 2(a) (the chair "shall" preside). Presiding officers cannot arbitrarily defeat the will of a body by refusing to entertain motions or permit expression of the majority's will. 59 Am.Jur.2d Parliamentary Law § 6 (1987). The will of a majority of members of a meeting body supercedes the will of the presiding officer. *Id.* More to the point, Robert's Rules of Order provides that "[i]f the [Chair] for any reason

vacates the chair or is absent, the [Vice Chair] ... normally should take the chair." Ch. XV, § 46.

39. The evidence is undisputed that a majority of the members of the Nashville Meeting desired to have the meeting be called to order; Gargan's refusal to do so was an improper attempt to subvert the will of the controlling body. As such, this Court finds that Gargan was acting improperly and functionally absented himself from the meeting, despite his continuing physical presence in the room. Since the National Party Chair was functionally absent from the room, Vice Chair Moan properly served pursuant to the Party's constitution as "National Party Chair in the absence of the National Party Chair" and appropriately called the meeting to order. See Art. VIII, § 2(b). For this Court to find otherwise would result in the perverse outcome that the Chair could thwart the will of the National Committee, despite the constitution's admonishment that "[e]ach National Officer shall be subject to the proper directives and actions of ... the National Committee." Art. VIII, § 9.

There Were Not Enough Properly Credentialed National Committee Members to Remove Gargan and Young By a Two-Thirds Vote of All Registered Members.

[6, 7] 40. Courts are traditionally reluctant to interfere with the internal operations of political parties. *Irish v. Democratic-Farmer-Labor Party of Minnesota*, 399 F.2d 119, 120 (8th Cir.1968), citing *Lynch v. Torquato*, 343 F.2d 370 (3d Cir.1965). Specifically, with regard to the credentialing of delegates the national party determines whether a state's delegates are seated at a national party convention. See *Democratic Party of United States v. Wisconsin*, 450 U.S. 107, 126, 101 S.Ct. 1010, 67 L.Ed.2d 82 (1981); see also *Cousins v. Wigoda*, 419 U.S. 477, 489, 95 S.Ct. 541, 42 L.Ed.2d 595 (1975) (holding that the First Amendment protected the party's right to determine the composition of state delegations). Ultimately, "the proper forum for determining intra-party disputes as to which delegates shall be seated" is the convention itself. *O'Brien v. Brown*, 409 U.S. 1, 4, 92 S.Ct. 2718, 34 L.Ed.2d 1 (1972), vacated as moot, 409 U.S. 816, 93 S.Ct. 67, 34 L.Ed.2d 72, 73; see also *Irish*, 399 F.2d at 120 ("the attitude [of the courts] has been one of reluctance and of willingness to have the challenged body initially given the opportunity to

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attempt to reorganize itself").

41. In light of the well-settled proposition that political parties determine their own credentialing procedures, this Court is limited to analyzing the question of whether the Reform Party registered and/or credentialed [FN3] members at the Nashville Meeting pursuant to its own rules and constitution. This Court may not look behind the decisions of the individual state parties to certify members to attend the National Committee meeting at Nashville. So long as the Nashville Meeting credentialed and/or registered members--whoever they may be--pursuant to the Party's rules and constitution, this Court may not upset their decision to associate politically.

FN3. Throughout the trial, the terms "registering" and "credentialing" were used interchangeably.

42. There is no standing committee on the registering and/or credentialing of National Committee members. However, by creating an advisory committee comprised of four people from each competing group to review the registration of members for the Nashville Meeting, National Secretary Mangia created what this Court perceives to be a fair and equitable procedure to register and/or credential members for the meeting. More significantly, this Court finds that--to the extent there were procedures for registering and/or credentialing members from contested states--those procedures were followed by the advisory committee and the members in attendance at the Nashville Meeting.

43. To the extent Gargan challenges the registering and/or credentialing of representatives from specific states, those challenges are without merit. While there was a conflict between competing representatives of the Virginia delegation, neither group was seated at the meeting. Thus, there was no prejudice to Gargan or Young. Similarly, to the extent there was a conflict between competing representatives of the Ohio delegation, those competing factions resolved their seating arrangement among themselves.

44. As for the other nine states where only one (albeit disputed) delegation was sent, the right to challenge that delegation was waived by the failure of an opposing delegation to appear. Since no contesting representatives from those states traveled

to Nashville, the body was not obligated to hear challenges to the representatives who did actually arrive. Moreover, no challenges were made to the seating of the disputed representatives from the nine contested states by any National Committee members at the meeting itself. Thus, any argument as to the seating of those members is waived. See Robert's Rules of Order, Ch. XIX, § 58. Finally, to the extent that a challenge existed in the form of a letter from certain members of the Alaska group, Secretary Mangia summarized the contents of that letter to the body which then validly and within its own power reached a decision as to the seating of those representatives.

45. Ultimately, this Court finds that the Party had a procedure to register and/or credential members for the Nashville Meeting and followed that procedure. Since members of a political party have the ultimate right to self-determination, including the ability of a meeting of that party to register and/or credential its own members, this Court finds that the Nashville Meeting's removal of Gargan and Young was not invalid because delegates were not properly registered and/or credentialed.

CONCLUSION

46. As a result of the actions of the Executive Committee at their meeting on December 28, 1999, Young was removed from the position of Convention Committee Chair/Treasurer. However, pursuant to action taken by National Party Chair Gargan in early January 2000, Young was duly re-appointed Chair/Treasurer of the Convention Committee. Art. VII, § 1(a). Young remained Convention Committee Chair/Treasurer until the National Committee recalled him and re-appointed Moan as Convention Committee Chair/Treasurer at the Nashville Meeting.

47. As a result of the actions of the National Committee at the Nashville Meeting, Gargan and Young were divested of any and all authority to represent themselves as the Reform Party's National Party Chair and Treasurer. While there was a dispute at the meeting about the definition of "two-thirds ... of registered Members of the National Committee" as it relates to the removal of National Officers, this Court does not reach a decision on the meaning of that constitutional provision since both Gargan and Young were removed by 109 affirmative

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votes, which are more than is required under either definition. See Art. VIII, § 6(a).

48. At the Nashville Meeting, Choate was duly-elected as Interim National Party Chair and McLaughlin was duly-elected as Interim National Treasurer.

49. As a result of the actions of the National Committee at the Nashville Meeting, Choate and McLaughlin now possess the authority and are bound by the *762 duties conferred on the Reform Party National Party Chair and the Reform Party National Treasurer by the Reform Party constitution, its governing rules, and federal law.

50. Any actions taken by Gargan or Young, allegedly acting as National Officers of the Reform Party (with regard to the Las Vegas Convention or otherwise), since their removal as National Officers on February 12, 2000, were ultra vires, and without legal effect. Moreover, this Court finds that the Las Vegas Convention, held on March 17-19, 2000, was not a duly-constituted or properly convened Convention of the Reform Party of the United States of America, and any and all actions taken there are null and void as they relate to the Reform Party.

51. The Reform Party will suffer irreparable injury if Gargan and Young are not enjoined from acting as the authorized representatives of the Party.

52. There is no adequate remedy at law for the Reform Party.

ORDER

For the reasons set forth in the attached Opinion, it is hereby ORDERED that John J. Gargan and Ronn Young, and their representatives, agents, servants, employees and attorneys, and any and all persons acting in concert with them, are hereby enjoined from acting as officers or authorized representatives of the Reform Party of the United States of America, including the Convention Committee, and shall hereby immediately cease and desist from any and all activities in such representative capacity, including, but not limited to: (1) solicitation of donations on behalf of the Reform Party of the United States of America, or the Convention Committee; (2) distribution of Press Releases on behalf of the Reform Party of the United States of

America, or the Convention Committee; (3) operation of an official web-site on behalf of the Reform Party of the United States of America, or the Convention Committee; (4) expenditure of funds on behalf of the Reform Party of the United States of America, or the Convention Committee; (5) solicitation of party members on behalf of the Reform Party of the United States of America; (6) organization of a national convention on behalf of the Reform Party of the United States of America, or the Convention Committee; (7) making any use of the name of the Reform Party of the United States of America, or the Convention Committee, or any substantially similar variant or derivation thereof; (8) making use of any logos, non-textual trademarks or service marks belonging to the Reform Party of the United States of America; and (9) making any other oral, written or electronic communication in a representative capacity on behalf of the Reform Party of the United States of America, or its Convention Committee.

Furthermore, it is hereby ORDERED that funds currently being held in the Registry of the Court, pursuant to prior order of this Court, will be released to the custody of Gerald Moan, as Chairman of the Convention Committee of the Reform Party of the United States of America. Since the Reform Party is under an obligation to comply with agreements filed pursuant to 11 C.F.R. § 9008.3(a)(1), this Court requires the Reform Party to acknowledge its obligations in writing to this Court prior to and as a condition of the release of any and all funds held in the Registry of the Court. [FN1] Upon release of the funds, the Reform Party shall deposit and maintain all funds released to them in a depository account properly registered with the Federal Election Commission, shall provide the Federal Election Commission with notice of any changes in the information provided in its application for federal funds that was submitted in September, 1999, *763 and shall specify to the Federal Election Commission the depository to which the United States Treasury should direct any supplemental payment of convention funds pursuant to 11 C.F.R. § 9008.5.

FN1. The Federal Election Commission filed an amicus brief without objection by either party. While the Commission did not take a position regarding who are the properly elected officers of the Reform Party, it did suggest that the Court include in its Order certain language regarding the

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legal obligations of the parties concerning the use of federal election funds. This Court has decided to adopt and integrate that language into this Order.

Furthermore, it is hereby ORDERED that John J. Gargan and Ronn Young shall turn over all documentation regarding convention funding and disbursements made by the Reform Party 2000 Convention Committee (or on its behalf) to the Reform Party of the United States of America, who are responsible under the Presidential Election Campaign Fund Act to provide all such information

to the Federal Election Commission for any post-convention audit.

The Clerk of the Court is hereby directed to send a certified copy of this Order and attached Opinion to all counsel of record and to Stephen E. Hershkowitz, Assistant General Counsel, Federal Election Commission, 999 E Street, NW, Washington, DC 20463.

END OF DOCUMENT

227 Minn. 52; *, 33 N.W.2d 831, **;
1948 Minn. LEXIS 639, ***

Democratic-Farmer-Labor State Central Committee and Others v. Mike Holm. Elmer A. Benson and
Others, Interveners

No. 34,815

Supreme Court of Minnesota

227 Minn. 52; 33 N.W.2d 831; 1948 Minn. LEXIS 639

September 2, 1948

PRIOR HISTORY: [***1]

Original proceeding in supreme court upon the petition of the Democratic-Farmer-Labor State Central Committee and Orville L. Freeman and Curtiss Olson, its chairman and secretary respectively, for an order requiring Mike Holm as secretary of state to reject a certificate previously filed by interveners naming the nominees for presidential electors of said party and to receive and file the certificate of petitioners naming the nominees for such electors.

DISPOSITION: Writ issued.

CORE TERMS: convention, delegate, certificate, elector, nomination, election, presidential, nominated, secretary of state, political convention, qualification, contest, chairman, ballot, county convention, credential, quorum, central committee, candidates, regular, nominee, usage, withdrawing, oppression, organize, supplied, elected, seats, purporting, regularity

HEADNOTES: Constitution -- judicial powers -- review of actions of political conventions -- determination of factional controversies within party.

1. The rule with regard to judicial review of the actions of political conventions is that in factional controversies within the party, where there is no controlling statute or clear right based on statute law, the courts will not assume jurisdiction, but will leave the matter for determination within the party organization.

Election -- organization and functions of political convention -- "quorum" competent to transact business.

2. Absent a controlling statute, a political convention is the judge of the election, qualifications, and returns of its own [***2] members. Such a convention is not a select body requiring the presence of a majority of all persons entitled to participate in order to constitute a quorum for the transaction of business. If that convention is regularly called, those who actually assemble constitute a quorum, and a majority of those voting is competent to transact business. The withdrawal of either a majority or minority does not affect the right of those remaining to proceed with the business of the convention, and those withdrawing cannot claim to be the legal party convention.

Election -- organization and functions of political convention -- nomination of presidential electors.

3. Tested by the foregoing rules, the Democratic-Farmer-Labor convention held at Brainerd on June 12 and 13, 1948, was the duly called and legally organized convention of that party and continued to be such during its session. The persons nominated for presidential electors by that convention are the party nominees.

Election -- organization and functions of political convention -- supreme court without jurisdiction to determine contests for seats in convention.

4. Since the interveners in their answer concede that [***3] the Brainerd convention was legally called and organized, it was the judge of the qualifications and right to seats of its members, and this court is without jurisdiction to pass upon the question as to whether it rightfully determined the contests of delegates for seats in that convention. Such being the law, there is no issue of fact made by the pleadings over which we have jurisdiction requiring a reference.

Election -- organization and functions of political convention -- nomination of presidential electors.

5. The petitioners are entitled to the order and writ of this court commanding the secretary of state, respondent herein, to reject the certificate of nomination of presidential electors filed with him June 14, 1948, by the interveners herein and to accept and file the certificate of the petitioners, if that be in proper form.

COUNSEL: *Lee Loevinger*, for petitioners.

J. A. A. Burnquist, Attorney General, and *Ralph A. Stone*, Assistant Attorney General, for Mike Holm, respondent.

Francis M. Smith, intervener, *pro se*.

Hyman H. Cohen, for interveners *Elmer A. Benson*, *Frank Boyd*, *Walter Johnson*, *Joseph Paszak*, *Orville E. Olson*, *George Vikingstad*, [***4] *Ione Kleven*, *Axel T. Nyberg*, *James Youngdale*, and *Carolyn Storlie*.

JUDGES: *Loring*, Chief Justice. Mr. Justices *Peterson*, *Thomas Gallagher*, and *Frank T. Gallagher* took no part in this decision.

OPINIONBY: LORING

OPINION: [*53] [**832] This is a proceeding in this court under M.S.A. 205.78 initiated by petition by those purporting to be the chairman and the secretary of the state central committee of the Democratic-Farmer-Labor party, which, for the sake of convenience, will hereinafter be referred to as the DFL party, seeking an order or writ requiring the secretary of state to correct a claimed error or omission in the [*54] preparation of ballots for the general election to be held November 2, 1948, insofar as those ballots contain the names of presidential electors nominated by the convention of that party. There is no contention that the petitioners are not qualified to bring the proceeding. See, *State ex rel. Sauer v. District Court*, 74 Minn. 177, 77 N.W. 28. The question of whether electors may be nominated by petition is not before us.

It appears by the petition that the secretary of state has refused to accept the petitioners' certificate as to nominees for presidential [***5] electors for the reason that another certificate, fair on its face, also purporting to name presidential electors for that party, had previously been filed in his office on June 14, 1948.

The petition seeks an order requiring the secretary of state to reject the certificate previously filed and to receive and file a certificate naming the nominees for electors of the DFL party which the petitioners propose to file. Following the filing of the petition in this court, the persons who filed the first certificate, who are interveners herein, moved this court for an order discharging the petition, and, in the event the petition be not discharged, they filed an answer and asked for the appointment of a referee to take testimony on issues of fact which they contend are tendered thereby.

The facts out of which the present controversy arose are that the 1948 convention of the DFL party

was legally called by the state chairman to convene in the armory at Brainerd, Minnesota, on June 12 and 13, 1948. The delegates to that convention [**833] assembled and organized the convention. The answer to the petition admits the legality of the call and that the convention was organized and proceeded [***6] to pass upon contested delegations, but in connection with such contests alleges that those delegates who voted in the convention "arbitrarily, capriciously, oppressively and unlawfully" excluded legally elected delegates who were under contest. As examples of such alleged "arbitrary, capricious, oppressive and unlawful" actions, the answer alleges some eleven examples of conduct, all of which relate in some manner to such contests. The answer then charges that by such actions the theretofore legal convention [*55] ceased to be the legal convention of the party, and early in the afternoon of June 13 became a mere assemblage of citizens without authority to bind the party, whereupon certain delegates withdrew from the convention and met immediately in front of the armory, where the convention was being held, assumed to organize themselves into a convention under the original call, and adjourned to a hall in the city of Minneapolis to reassemble at 10 p.m. of that same day. It was at this reassembly in Minneapolis that the persons whose names appear on the certificate, first filed with the secretary of state, were nominated as electors, and it was by a certificate filed by the [***7] alleged officers of that assumed convention that the certificate of nominations was filed with the secretary of state on June 14, 1948.

It is the contention of the petitioners that the Brainerd convention was the duly called and organized party convention and that it had the sole right to judge the qualifications and credentials of its own members; that its determinations thereof are not subject to judicial review; and therefore that the certificate already filed with the secretary of state is not the certificate of the duly authorized party or of its convention officers. On the other hand, the interveners, who are the officers of the Minneapolis convention, contend that the actions of the Brainerd convention with reference to the seating of contestants was so arbitrary, fraudulent, and unlawful as to justify the withdrawal of the delegates and the organization of a new convention under the original call which would have the authority to nominate electors.

1. The rule with regard to judicial review of the actions of political conventions is that in factional controversies within a political party, where there is involved no controlling statute or clear right based on statute [***8] law, the courts will not assume jurisdiction, but will leave the matter for determination within the party organization.

2. Absent a controlling statute, a political convention is the judge of the election, qualifications, and returns of its own members. Such a convention is not a select body requiring the presence of a majority of all persons entitled to participate in order to constitute [*56] a quorum for the transaction of business. If that convention is regularly called, those who actually assemble constitute a quorum, and a majority of those voting is competent to transact business. The withdrawal of either a majority or minority does not affect the right of those remaining to proceed with the business of the convention, and those withdrawing cannot claim to be the legal party convention.

This court in Phillips v. Gallagher, 73 Minn. 528, 534, 76 N.W. 285, 287, 42 L.R.A. 222, in discussing a contention that the law relative to election contests applied to party convention nominations, said:

"But such rules have only a limited application to a political convention, which has control over its own proceedings and officers, in the absence of any statutory regulations, [***9] and may proceed according to party usages and customs. The questions which such a convention deals with are essentially political, and it would be a menace to the right of the members of a political party to select their own party nominees, and to the respect which should be entertained for judicial tribunals, for the courts to review and reverse the proceedings of a political convention, in the absence of fraud or oppression on its part or of its officers.

"The delegates in a nominating convention meet for the purpose of selecting and agreeing upon candidates for office, to be [**834] supported by the party. The discharge of this duty involves

the exercise of judgment and discretion on the part of the members of the convention, and a majority of them have, in the absence of fraud or oppression, the right to control the action of the convention, and to correct or reverse any action taken by it. Such a convention is a deliberative body, and unless it acts arbitrarily, oppressively or fraudulently, its final determination as to candidates, or any other question of which it has jurisdiction, will be followed by the courts. See *State [ex rel. Childs] v. Kiichli*, 53 Minn. 147, [***10] 154, 54 N.W. 1069, 1070, 19 L.R.A. 779; *Manston v. McIntosh*, 58 Minn. 525, 528, 60 N.W. 672, 673, 28 L.R.A. 605; *In re Fairchild*, 151 N.Y. 359, 45 N.E. 943. Any other rule would be intolerable, and permit the courts to [*57] impose upon a party a nominee contrary to the wishes of its members, as finally expressed by their representatives in convention."

The "fraud or oppression" referred to is, in our opinion, only such perversion of the purposes of the convention as may be effected after those purposes have been finally determined. It does not include the action of the convention in seating delegates involved in contests, because such a convention is the judge of the qualifications and right to seats of its own members. These qualifications and rights are political, as distinguished from legal rights, unless based upon specific statute; and courts will not entertain jurisdiction of them. See, Annotations, 20 A.L.R. 1035 and 169 A.L.R. 1282.

The answer in this case sets up only conclusory words alleging fraud and oppression, without supporting facts as to the illegality of the delegates seated. If, upon such an allegation, we were given jurisdiction to inquire as to the [***11] regularity of the elections of delegates to the state convention, we, instead of the state political organization, would be confronted with the political task of organizing the convention. *Marcum v. Ballot Commrs.* 42 W. Va. 263, 26 S.E. 281, 36 L.R.A. 296. In that case, in discussing the powers of a circuit nominating convention and the limits of judicial review, the court said (42 W. Va. 272, 26 S.E. 284):

"* * * *That convention, like the two branches of the state legislature and congress, like all deliberative bodies having power to organize, is the judge of the election, qualification, and returns of its own members.* If we go back of the circuit convention, how far shall we go? What shall limit our inquiry? Must we overlook every convention or primary election to say whether its members were old enough or of the politics to entitle them to participate? *There must be a limit of reason to our powers. That is the convention whose nominations are in question before us.* To hold otherwise would be for this Court to assume power to supervise and review the organization of political conventions -- practically to organize them." (Italics supplied.)

[*58] The case [***12] of *State ex rel. Fosser v. Lavik*, 9 N.D. 461, 83 N.W. 914, is on all fours with the case at bar, although it involved a county convention instead of a state convention. In that case, as here, two certificates of nomination were presented to the county auditor, and he refused the second one. The court said (9 N.D. 462, 83 N.W. 915):

"* * * It is clear that the one duty of the court in this case is to determine which faction, if either, constituted the *de facto* Republican convention. It is not our province to correct parliamentary errors, or to scrutinize the parliamentary methods by which an organization of a convention was secured, if only an organization of the Republican county convention was effected. A mass of affidavits has been presented to us, but we accept the statement of facts as found in defendant's brief, adding thereto only matters that are undisputed. The call for the convention was regular in all respects, and fixed the total number of delegates from the county at 19. The caucuses were duly held, and delegates properly elected from all the precincts except one. In that precinct one Dolan was elected, not by ballot, as required by section 497a, Rev. Codes, [***13] but by a *viva voce* vote of the electors present. [**835] On the day appointed for the convention the county Republican central committee met, in pursuance of usage, to determine what delegates were entitled to participate in the preliminary organization. That committee rejected Dolan's credential, -- *whether rightly or not, we must not inquire.* The delegates were called to order by the chairman of the central committee, and, on the nomination for temporary chairman, there was a tie vote of 9 to 9. The chairman of the central committee assumed the right to decide the tie, -- *whether rightly or not, we need not say,* because the election of the temporary chairman was immediately

acquiesced in by the entire convention. A temporary secretary was then nominated and elected by the unanimous vote of all the delegates. *It is clear at this point that a temporary organization of the convention had been effected.* The assembly was no longer an unorganized body of delegates. It was a convention. Whatever business that convention might transact must be transacted through the instrumentality [*59] of the organization thus effected, or of some organization that might [***14] by a vote of the convention as thus organized be substituted for the then existing organization. The convention, acting upon these self-evident propositions, at once proceeded with the appointment of the usual committees for such occasions. There was no contest, except as to the committee on credentials. Upon the motion that the chair appoint such committee, the vote stood 9 to 9; and the chair, after having voted as a delegate, assumed the right, as chairman, to vote again, and decide the vote in favor of the motion. We need not waste a moment in condemning this course. *This court is not interested in determining whether or not that convention was conducted according to strict parliamentary rules and usages. Such questions are foreign to the powers of judicial tribunals. They are political, purely. We are interested only in determining whether or not such convention was the Republican county convention, and as to that there can be no doubt, upon conceded facts.* The committee on credentials presented a report rejecting the credentials of Mr. Dolan, who had already been rejected by the central committee, and also rejecting the credentials of one McDonough. The motion [***15] to adopt this report was carried by a vote of 9 in the affirmative to 8 in the negative; the chair refusing to count the vote of McDonough in the negative. *That convention was the exclusive judge of the qualifications of its own members,* and by that vote it conclusively determined that there were 17 qualified delegates elected to that convention, and no more, and that Dolan and McDonough were not delegates legally elected and qualified to sit in said convention. When this was definitely determined, the 8 delegates, who were thus left a minority faction, and all of whom had participated in the preliminary organization and in every move of the convention up to this point, without any motion to adjourn, or any public announcement of any intention to withdraw, quietly left the room, and, calling to them the 2 men who had been rejected by the convention, they proceeded to another room, and assumed to organize themselves into a convention, and nominated a full list of county officers; and the parties who acted as chairman and secretary of such assumed convention [*60] executed a certificate of nomination, fair on its face, and purporting to be the nominations made by the Republican [***16] county convention for the offices therein specified. The certificate was received and filed by the auditor. The 9 delegates remaining in the regular convention, and being a majority of the delegates entitled to seats in that convention, proceeded to nominate county officers; and a certificate of such nomination, fair on its face, and purporting to be the certificate of nominations made by the Republican county convention for said Pierce county, was presented to the auditor, who refused to receive or file the same, for the reason that the certificate of nominations made by the Republican county convention was already on file in his office. True it is that the auditor could properly receive and place upon the official ballot but one list of Republican nominations for county offices, *but he was bound to so receive and place upon the ballot the nominations made by the regular Republican county convention.* State v. Falley, 9 N.D. 450, 83 N.W. Rep. 860. [**836] This he has refused to do. Let the peremptory writ issue as prayed. All concur." (Italics supplied.)

We regard the reasoning of that case as sound.

In the later case of State ex rel. Granvold v. Porter, 11 N.D. [***17] 309, 319, 91 N.W. 944, 950, involving a similar situation, the court said:

"* * * The convention was not a select body, requiring the presence of a majority of all the persons entitled to participate in order to constitute a quorum for the transaction of business. The common-law rule as to assemblages of this character is that, where the meeting is regularly called, those who actually assemble constitute a quorum, and a majority of those voting is competent to transact business. Those who do not attend are presumed to assent to the action of the majority of those who do attend and vote. Field v. Field, 9 Wend. 395; Craig v. Presbyterian Church, 88 Pa. 42, 32 Am. Rep. 417; Ex parte Willcocks, 7 Cow. 401, 17 Am. Dec. 525; Everett v. Smith, 22 Minn. 53; Smith v. Proctor, 130 N.Y. 319, 29 N.E. Rep. 312, 14 L.R.A. 403; Lawrence v. Ingersoll, (Tenn.) 6 L.R.A. 308, and note (s.c. [88 Tenn. 52] 12 S.W. Rep. 422, 17 Am. St. Rep. 870); Cass

County v. Johnston, 95 U.S. 360, 24 L. Ed. 416. [*61] It follows, therefore, that, by withdrawing, the delegates merely waived their right to participate in the convention, and that their action in so doing did not affect its identity, or deprive [***18] those who were present of the right to proceed with the business of the convention. This we understand to be true in all cases, whether the withdrawing members constitute a majority or a minority. In this case the fact is established, however, that a majority of lawful delegates was present at all times in the Fox convention, and participated in its action. The convention which nominated the relator consisted of six regular delegates, -- the relator, who held a proxy, and Stevens, whose right to participate had been rejected by the regular convention. These facts bring the case fairly under the decision of this court in State [ex rel. Fosser] v. Lavik [9 N.D. 461, 83 N.W. 914], supra, wherein we held *that a minority of the delegates to a political convention cannot withdraw therefrom, and join themselves with those whose credentials have been rejected, and successfully claim that they constitute the legal party convention.*" (Italics supplied.)

In the article on Elections appearing in 18 Am. Jur., §§ 136, 137, the rule governing the powers of political conventions and the judicial review of their actions is stated as follows:

"A convention has the inherent power incident [***19] to all deliberative bodies having the power to organize to judge of the election, qualifications, and returns of its own members, and its action in seating or rejecting delegates is not subject to judicial review. * * * The convention, when assembled and organized, is, as has previously been shown, the depository of all party power, and it cannot be bound or limited in its action in any way by the permanent committee in the call issued for the convention. In the absence of statutory regulations, it has control over its own proceedings and affairs and may proceed according to party usages and customs. The discharge of the duties imposed on the convention involves the exercise of judgment and discretion on the part of its members, and a majority of them have, in the absence of fraud or oppression, the right to control [*62] the action of the convention and to correct or reverse any action taken by it, and its final determination as to candidates or any other question within its jurisdiction will be followed by the courts. * * *

"A convention regularly called and organized is not dissolved by the withdrawal of a minority of the delegates present, but remains, as before, a convention [***20] with full power to nominate the candidates to be voted for. Its nominees, and not those of the withdrawing minority, are entitled to be placed upon the ballot, * * *."

In 29 C.J.S., § 88, of article on Elections, the rule is stated as follows:

"Except to the extent that jurisdiction is conferred by statute or that the subject has been regulated by statute, the courts have no power to interfere with the judgments of the constituted authorities of established political parties in matters involving party government and discipline, [***837] to determine disputes within a political party as to the regularity of the election of its executive officers, or their removal, or to determine contests for the position of party committeemen or convention delegates. As elections belong to the political branch of the government, the courts will not be astute in seeking to find ground for interference, but will seek rather to maintain the integrity and independence of the several departments of the government by leaving questions as to party policy, the regularity of conventions, the nomination of candidates, and the constitution, powers, and proceedings of committees, to be determined [***21] by the tribunals of the party. Accordingly the courts will not assume jurisdiction of cases involving inquiry into the conventions of a political party. Thus the action of a state convention in deciding between two contesting delegations and the regularity of the state or district conventions or other meeting at which they were selected is regarded as conclusive." (Italics supplied.)

M.S.A. 204.02 provides:

"Presidential electors for the several political parties of this state *shall hereafter be nominated by delegate conventions called and held [*63] under the supervision of the respective state central committees of the several parties of this state.* The names of the persons nominated as presidential

electors shall be *certified to the secretary of state by the chairman of such convention* for the office of presidential elector and shall be placed upon the general election ballot in the manner now provided by law." (Italics supplied.)

The provisions which now appear as M.S.A. 204.02 first appeared as Ex. Sess. L. 1919, c. 27, later appearing as L. 1923, c. 125, § 11. Theretofore the nomination of electors had been subject to the provisions of the direct [***22] primary law. There was also at one time a presidential preference primary, L. 1913, c. 449, later amended by L. 1915, c. 372, but repealed by L. 1917, c. 133. After its repeal and the extension of the primary to all other state officers, n2 the elaborate machinery of the primary law, no doubt, seemed to the legislature wholly unnecessary, as applied to presidential electors, who by party organization, usage, and custom were bound to vote for the candidates nominated by the national convention. Consequently, Ex. Sess. L. 1919, c. 27, was enacted in time to apply to the 1920 presidential election. As we construe c. 27 and its continuance in force as a separate section in all subsequent legislation, as in L. 1923, c. 125, § 11, it was clearly intended to lift the convention to nominate presidential electors out of the other provisions of the primary election law and place it in a separate class under the control of the state central committee. The language of c. 27, now appearing as M.S.A. 204.02, is inconsistent with any other intent. We do not regard M.S.A. 202.11, et seq., as controlling this convention. Certainly, there is no intent evinced in those sections to confer [***23] jurisdiction on this court in controversies of this character. In *Johnson v. Schmahl*, 119 Minn. 179, 137 N.W. 741, this court held that the primary election law repealed, as inconsistent with its terms, the law providing for nomination of state officers by conventions. We think it is just as clear that as to presidential electors, whose situation is unique and distinct from that of other officers, the legislative [*64] intent was to restore the convention completely to party control. We so construe the section. Nothing in it indicates an intention to vest in the courts jurisdiction to pass upon the committee's decisions or on those of the convention so called, held, and supervised. The customs and usages of the party or its constitution were obviously sufficient protection to its members. No party constitution could confer jurisdiction upon the courts, and the statute authorizing such constitutions does not. M.S.A. 202.10.

-----Footnotes-----

n2. As originally enacted, the primary did not extend to state officers. L. 1899, c. 349.

-----End Footnotes----- [***24]

3-4-5. We conclude that the courts have no jurisdiction of the issues attempted to be raised by the pleadings before us and that consequently there is no issue of fact upon which a reference should be ordered. We further conclude that the electors nominated by the regular convention at Brainerd are entitled to be placed upon the ballot; that those named on the certificate, filed [***838] June 14, 1948, have no such right; that that certificate should be rejected and purged from the files of the secretary of state and that of the petitioners received and filed when the same is in due form. Let a mandate to that effect issue to the secretary of state.

So ordered.

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9 N.D. 461, *; 83 N.W. 914, **;
1900 N.D. LEXIS 253, ***

STATE, EX REL HANS FOSSER vs. ANDREW J. LAVIK.

[NO NUMBER IN ORIGINAL]

SUPREME COURT OF NORTH DAKOTA

9 N.D. 461; 83 N.W. 914; 1900 N.D. LEXIS 253

October 26, 1900, Opinion Filed

PRIOR HISTORY: [***1] Application for a writ of mandamus, on the relation of Hans Fossier, against Andrew J. Lavik.

Writ granted.

DISPOSITION: Peremptory writ issued.

CORE TERMS: convention, nomination, delegate, certificate, county convention, credential, auditor, ballot, chairman, faction, election, central committee, temporary, regular, elected, parliamentary, column, purporting, proceeded, effected, chair, political convention, political party, candidate, nominees, refused to receive, alternative writ, nominated, secretary, precinct

HEADNOTES: Elections -- Refusal to File Certificate of Nomination -- Mandamus.

Where a county auditor refuses to receive and file the certificates of nominations for county officers made by a political party entitled to a column upon the official ballot, this refusal is a matter publici juris. It involves the right of the citizen to vote for the nominees of the political party of his faith. It involves the exercise of the elective franchise, and indirectly involves the election of every candidate in that column upon the official ballot. This court has jurisdiction to issue an original writ of mandamus in such a case.

Political Questions -- Parliamentary Rulings.

Judicial tribunals cannot pass upon the correctness of parliamentary rulings or tactics adopted in a political convention. Such questions are purely political. Courts can determine in this behalf only whether or not an assembly is a political convention organized as the law requires.

Minority of Convention Cannot Withdraw and Organize a Legal Party Convention.

A political convention is the exclusive judge of the credentials and qualifications of persons claiming to be delegates thereto, and a minority of the delegates, as thus determined by the convention cannot, by withdrawing from said convention and joining themselves to the persons whose credentials have been rejected by the convention, constitute a legal party convention.

COUNSEL: F. H. McDermont, W. J. Maher, (Cochrane & Corliss of counsel), for relator.

L. N. Torson and P. J. McClory, for respondent.

JUDGES: BARTHOLOMEW, C. J.

OPINIONBY: BARTHOLOMEW

OPINION: [*462] [**914] BARTHOLOMEW, C. J. One Hans Fossier, as relator, made an original

application to this court for a writ of mandate to the auditor of Pierce county, commanding said auditor to receive and file a certain certificate of nomination, purporting to be the certificate of nomination for county offices for said Pierce county made by the Republican party of said county, and to print such nominations upon the official ballot. The alternative writ was issued, and upon the return day the defendant, by his counsel, moved to quash such writ on the ground that this court had no original jurisdiction of the case, for the reason that the case was not of such strictly public concern as is required by section 5165, Rev. Codes. It is true, this case involves directly only the nomination and election of county officers, but necessarily and inseparably connected therewith [***2] is the right of the citizen to vote for the regular nominees of his political party. It involves the exercise of the elective franchise, -- the most sacredly guarded franchise granted by the state. Indirectly, it involves the election of all the candidates named in [**915] the Republican column upon the official ballot, whether state, district, or county nominees, for the reason that the number of Republican votes cast in said county will depend to some extent upon who appear in the Republican column as the Republican candidates for the local or county offices. For these reasons, we think the matter is publici juris. As was said in effect in *State v. Nelson Co.*, 1 N.D. 88 at 101, 45 N.W. 33, the court will judge for itself whether the wrong complained of is of the nature that requires the interposition of this court. The motion to quash is denied.

Defendant also answered to the alternative writ. From the writ and answer it is clear that when the Republican county convention of Pierce county convened in said county on September 29, 1900, it was composed of two factions, bitterly opposed, and the ultimate result was a division; each faction claiming to be the [***3] Republican county convention, and each nominating a full list of county officers. The certificate of nomination as made by one faction was duly presented to, and received and filed by, the auditor. Subsequently the certificate of nominations as made by the other faction was presented to the auditor, but he refused to receive the same upon the ground that the certificate of nominations made by the Republican county convention was already on file. It is clear that the one duty of the court in this case is to determine which faction, if either, constituted the *de facto* Republican convention. It is not our province to correct parliamentary errors, or to scrutinize the parliamentary methods by which an organization of a convention was secured, if only an organization of the Republican county convention was effected. A mass of affidavits has been presented to us, but we accept the statement of facts as found in defendant's brief, adding thereto [463] only matters that are undisputed. The call for the convention was regular in all respects, and fixed the total number of delegates from the county at 19. The caucuses were duly held, and delegates properly elected from all the precincts [***4] except one. In that precinct one Dolan was elected, not by ballot, as required by section 497a, Rev. Codes, but by a *viva voce* vote of the electors present. On the day appointed for the convention the county Republican central committee met, in pursuance of usage, to determine what delegates were entitled to participate in the preliminary organization. That committee rejected Dolan's credential, -- whether rightly or not, we must not inquire. The delegates were called to order by the chairman of the central committee, and, on the nomination for temporary chairman, there was a tie vote of 9 to 9. The chairman of the central committee assumed the right to decide the tie, -- whether rightly or not, we need not say, because the election of the temporary chairman was immediately acquiesced in by the entire convention. A temporary secretary was then nominated and elected by the unanimous vote of all the delegates. It is clear at this point that a temporary organization of the convention had been effected. The assembly was no longer an unorganized body of delegates. It was a convention. Whatever business that convention might transact must be transacted through the instrumentality of [***5] the organization thus effected, or of some organization that might by a vote of the convention as thus organized be substituted for the then existing organization. The convention, acting upon these self-evident propositions, at once proceeded with the appointment of the usual committees for such occasions. There was no contest, except as to the committee on credentials. Upon the motion that the chair appoint such committee, the vote stood 9 to 9; and the chair, after having voted as a delegate, assumed the right, as chairman, to vote again, and decide the vote in favor of the motion. We need not waste a moment in condemning this course. This court is not interested in determining whether or not that convention was conducted according to strict parliamentary rules and usages. Such questions are foreign to the powers of judicial tribunals. They are political, purely. We are interested only in determining whether or not such convention was the Republican county convention, and as to that there can be

no doubt, upon conceded facts. The committee on credentials presented a report rejecting the credentials of Mr. Dolan, who had already been rejected by the central committee, and also rejecting [***6] the credentials of one McDonough. The motion to adopt this report was carried by a vote of 9 in the affirmative to 8 in the negative; the chair refusing to count the vote of McDonough in the negative. That convention was the exclusive judge of the qualifications of its own members, and by that vote it conclusively determined that there were 17 qualified delegates elected to that convention, and no more, and that Dolan and McDonough were not delegates legally elected and qualified to sit in said convention. When this was definitely determined, the 8 delegates, who were thus left a minority [*464] faction, and all of whom had participated in the preliminary organization and in every move of the convention up to this point, without any motion to adjourn, or any public announcement of any intention to withdraw, quietly left the room, and, calling to them the 2 men who had been rejected by the convention, they proceeded to another room, and assumed to organize themselves into a convention, and nominated a full list of county officers; and the parties who acted as chairman and secretary of such assumed convention executed a certificate of nomination, fair on its face, and purporting [***7] to be the nominations made by the Republican county convention for the offices therein specified. The certificate was received and filed by the auditor. The 9 delegates remaining in the regular convention, [**916] and being a majority of the delegates entitled to seats in that convention, proceeded to nominate county officers; and a certificate of such nomination, fair on its face, and purporting to be the certificate of nominations made by the Republican county convention for said Pierce county, was presented to the auditor, who refused to receive or file the same, for the reason that the certificate of nominations made by the Republican county convention was already on file in his office. True it is that the auditor could properly receive and place upon the official ballot but one list of Republican nominations for county offices, but he was bound to so receive and place upon the ballot the nominations made by the regular Republican county convention. *State v. Falley*, 9 N.D. 450, 83 N.W. 860. This he has refused to do. Let the peremptory writ issue as prayed. All concur.

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