

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2021-005107

05/07/2021

HONORABLE MICHAEL W. KEMP

CLERK OF THE COURT
C. Ladden
Deputy

WILLIAM BEARD, et al.

TIMOTHY A LASOTA

v.

ARIZONA REPUBLICAN PARTY, et al.

JOHN DOUGLAS WILENCHIK

JUDGE KEMP
COURT ADMIN-CIVIL-ARB DESK

MINUTE ENTRY

The Court has reviewed Defendants' Response to Plaintiffs' Application for Order to Show Cause and Injunctive Relief and Defendants' Motion to Dismiss, Plaintiffs' Reply to Response to Application for Order to Show Cause and Response to Motion to Dismiss, and Defendants Reply in Support of Motion to Dismiss. The Court previously reviewed the First Amended Complaint for Declaratory/Injunctive Relief. The Court also heard oral argument on May 4, 2021.

Plaintiffs filed for injunctive relief on April 6, 2021. The case arises out of an annual statewide committee meeting that occurred on January 23, 2021, to elect party officers in the Arizona Republican Party. Plaintiff William Beard ran for Congressional District 2 Member at Large and came in fourth out of six candidates with 16.16% of the vote. Plaintiff Sandra Dowling ran for Congressional District 8 Member at Large and came in fourth of five candidates with 16.83 % of the vote.

Plaintiffs sought a recount of the votes. It is disputed as to when Plaintiffs objected to the votes but Plaintiffs allege they both were told right after the vote that they had won only to be later told, after the meeting adjourned, that they had not won. Plaintiffs now seek a Special

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Meeting to address their concerns about irregularities in the voting process. Plaintiffs originally sought April 24, 2021, for the Special Meeting.

To call a Special Meeting, the party's bylaws require 20% or more of the state's committee members from at least nine counties to sign on or 40% of the voting members of the executive committee. If signatures are gathered, a Call Document is generated which, if sufficient signatures are submitted, demands a Special Meeting. The Call Document is issued by the Chairwoman, in this case Defendant Kelli Ward. This written Call Document, according to Secretary Yvonne Cahill, did not have sufficient valid signatures.

Injunctive Relief to have the Special Meeting on April 24 is moot since that day has passed. As previously discussed on the record, this date was not practical given the filing of the First Amended Complaint on April 6 and the time needed to file pleadings and hear oral argument to resolve the Motion to Dismiss.

The primary question for the Court is whether this is a justiciable matter. The Court finds it clearly is not for a number of reasons.

This case presents a non-justiciable internal political dispute. As a general rule, the judiciary ought not to interfere with the internal affairs of a political party. *O'Brien v. Brown*, 409 U.S. 1 (1972). The First Amendment requires autonomy for political parties and the public interest is best served by allowing political parties to function without judicial supervision. *Id.* at 5. The focus in determining whether a dispute is justiciable is whether the dispute is an integral part of the electoral process or merely involves the internal affairs of the political party. *Storer v. Brown*, 415 U.S. 724, 735 (1974).

Here, this clearly involves the internal affairs within the Arizona Republican Party. Political parties are voluntary associations who establish their own rules and may be formed, reorganized or dissolved at their will. This dispute does not implicate any Arizona or federal statute, nor does it involve a core Constitutional concern as was the case in *Smith v. Allwright*, 321 U.S. 649 (1944) where blacks were prohibited by the Texas Democratic Party from running in any primaries for public office. This case does not involve core Constitutional privileges like the right to vote or the right to hold public office. Although political parties are referenced in Title 16 of the Arizona Revised Statutes, the Court was not presented with any statutory authority for Courts to intervene in matters concerning inter-party conflicts such as this.

Nor does this case involve an issue concerning elective office. The election of these delegates was not subject to a public vote but rather an internal voting process subject to internal bylaws and regulations ("Robert's Rules"). It has nothing to do with the public election to public office, but rather the election of internal party officers.

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The bylaws and regulations (“Robert’s Rules”) are distinguishable from articles of incorporation and bylaws in a Home Owner’s Association (“HOA”) or private country club. The case cited by Plaintiffs, *Rowland v. Union Hills County Club*, 157 Ariz. 301 (1988), is distinguishable. In *Rowland*, former members of a country club sued the president and board of directors after being expelled for “conduct unbecoming a member.” *Id.* at 303. The decision to exclude a person from a social club should be one of the more remote objects of judicial scrutiny. *Aspell v. American Contract Bridge League of Memphis, Tennessee*, 122 Ariz. 399 (1979). Here, Plaintiffs were not expelled or disciplined but rather take issue with the voting process in electing delegates within the party. Judicial scrutiny is much less warranted here, especially in light of First Amendment concerns relating to political parties. Political parties, to be sure, are unique in their constitutional considerations and distinguishable from HOAs or country clubs. As conceded by Plaintiffs, political parties are distinct from other private organizations and therefore subject to less judicial scrutiny.

Plaintiffs do have remedies short of judicial intervention. They can seek to obtain more signatures to force a Special Meeting. There is also a lawsuit pending before the Honorable Christopher Coury where Plaintiffs are seeking to review ballots and documents relating to the votes. The Court was informed during oral argument that the parties have reached an agreement to allow Plaintiffs to review relevant documents and materials. Defendants assert that they previously offered to allow Plaintiffs to inspect the paper ballots in accordance with the bylaws. Plaintiffs could also seek to change the bylaws to make the voting process, and review of the voting process, more transparent with more available remedies to challenge voting results. (The Court recognizes this remedy will likely not result in the immediate relief sought by Plaintiffs.) Plaintiffs can seek to replace Secretary Cahill and/or Chairwoman Ward with sufficient support from Republican Committee members. However, the Court does not find that judicial intervention is warranted.

Superior Courts in Arizona are mindful and supportive of transparency and fair play. Whether or not any chicanery took place in the voting process on January 23, this Court finds that it does not have judicial authority to intervene in an inter-party dispute that is guided by rules and procedures agreed upon by an independent political party. This Court also finds that judicial intervention would be inappropriate given the available remedies outlined above and the public interest in the independence of political parties from judicial oversight. The Court simply does not have authority to order the chairwoman of the Republican Party to order a Special Meeting to consider an audit, investigation, recount or re-vote of internal party procedures not involving public office or a core Constitutional concern.

IT IS ORDERED that the Motion to Dismiss is granted.

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IT IS FURTHER ORDERED vacating the Evidentiary Hearing set for May 18, 2021 at 10:00 a.m. in this division.