

OREGON TAX COURT



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FROM: Judge Henry C Breithaupt

SUBJECT: Reeves, et al.,v. Wagner, et al. CV12010345

COMMENTS: Ruling on motions

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CIRCUIT COURT OF OREGON

FIFTH JUDICIAL DISTRICT
CLACKAMAS COUNTY COURTHOUSE
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May 21, 2013

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Re: Reeves, et al. v. Wagner, et al., No. CV12010345

Dear counsel:

This matter is before the court on the motions of Defendants for summary judgment and a cross-motion of Plaintiffs for partial summary judgment.

An internal feud has erupted within the Libertarian Party of Oregon (LPO). At least two factions exist, carrying on their dispute by way of challenges to the validity of certain actions of the membership or leadership of the party and challenges to the legitimacy of persons who purport to be officers of the party. Plaintiffs have suggested that there are two organizations existing, but this dispute must logically be relating only to the LPO as it existed prior to the disputes in question.

The constitution of the LPO provides for a judicial committee of the party, that is stated to be "the final body of appeal in all matters requiring interpretation of the Constitution, Bylaws, rules, or resolutions of the LPO, subject to the provision that a decision of the Judicial committee may be overruled by a three quarters vote at the next convention." Constitution, IV (4).

As the quorum requirement for conventions of members has been discussed, there has been difficulty mustering a quorum for conventions. The proper interpretation of the quorum requirement has not, as far as the record indicates, been the subject of a ruling of the LPO Judicial Committee. Apart from the quorum issue, the record does not indicate that the LPO is otherwise unable to conduct a convention of its members.

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The record indicates that the question of which faction is to be recognized as the incumbent leadership of the LPO has been submitted to the national party for resolution and has received the attention and rulings of the national party.

Against this background, the court is firmly of the opinion that the case law of the United States Supreme Court counsels, if it does not direct, that the judicial branch of the State of Oregon either cannot or should not insert itself in this dispute and declare or dictate a result. *See, e.g., Cousins v. Wigoda*, 419 US 477, 42 L Ed 2d 595, 95 S Ct 541 (1975). The suggestions of Plaintiffs to the effect that, with respect to the First Amendment concerns raised by Defendants, this court is somehow not “the state” are simply wrong. The judicial branch is no less “the state” than are the legislative or executive branches. As the United States Supreme Court has observed:

“We have said the prohibitions of the Fourteenth Amendment are addressed to the States. They are, ‘No State shall make or enforce a law which shall abridge the privileges or immunities of citizens of the United States, * * * nor deny to any person within its jurisdiction the equal protection of the laws.’ They have reference to actions of the political body denominated a State, by whatever instruments or in whatever modes that action may be taken. A State acts by its legislative, its executive, or its judicial authorities. It can act in no other way. The constitutional provision, therefore, must mean that no agency of the State, or of the officers or agents by whom its powers are exerted, shall deny to any person within its jurisdiction the equal protection of the laws. Whoever, by virtue of public position under a State government, deprives another of property, life, or liberty, without due process of law, or denies or takes away the equal protection of the laws, violates the constitutional inhibition; and as he acts in the name and for the State, and is clothed with the State's power, his act is that of the State. This must be so, or the constitutional prohibition has no meaning.”

Ex Parte Virginia, 100 US 339, 25 L Ed 676 (1879).

The Oregon Legislature has evidenced significant concern about the prospect of the state government intervening in political party affairs. Although ORS 248.005 contains a requirement that political parties insure the widest and fairest representation, ORS 248.011 enjoins the Secretary of State from enforcing that rule or any other rule of a political party. The Legislature has not, by statute, purported to direct the judiciary as to such matters, but that is most probably a product of legislative concern about the separation of powers under the Oregon Constitution rather than legislative doubt about the wisdom of governmental branches staying apart from internal disputes of political parties.

As to itself, the LPO has established a Judicial Committee to address the exact kind of questions Plaintiffs would have this court decide. The Constitution of the LPO dictates that the decisions of the Judicial Committee, not the decisions of a court, will be final, subject only to appropriate action of the full membership of the party. Of course, the LPO could not insulate itself from challenge in the event of a challenge properly raised under the Constitution of the

State of Oregon or the Constitution of the United States, but Plaintiffs have raised no such claim in this case.

Plaintiffs insist that the bylaws of the LPO constitute a contract in respect of which they may seek a declaratory judgment. If that is so, then it would appear that an even more basic form of contract may be found in the Constitution of the LPO. It is in that Constitution that the binding role of decisions of the Judicial Committee of the LPO is found.

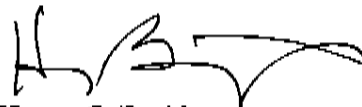
As to its relation to the national party, there also exists a nongovernmental process for resolution of disputes of the type that have occurred. Indeed, resort has been taken to that process as to a part of the existing dispute.

This matter is either nonjusticiable or, if the court has the power to address the dispute, it also has discretion to stay its hand in light of the existence of other remedies that may lead to resolution of these sensitive matters without the need for the court to intrude upon the inner workings of a political party.

The motion of Defendants in this regard is granted. The other motions of Defendants are denied as moot, including Defendants' motions to strike. The motions of Plaintiffs are denied.

Counsel for Defendants are directed to prepare a form of order and, if appropriate, a form of judgment.

Very Truly Yours,

A handwritten signature in black ink, appearing to read 'H. C. Breithaupt', with a stylized flourish at the end.

Henry C. Breithaupt
Judge