

Greg Chaney I.S.B. 10513
CHANEY LAW OFFICE
PO Box 489
Caldwell, Idaho 83606
Telephone: (208) 314-3850
Facsimile: (208) 549-9612
info@gregchaneylaw.com

Attorney for Plaintiffs

IN THE DISTRICT COURT FOR THE SEVENTH JUDICIAL DISTRICT
FOR THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BINGHAM

EXECUTIVE COMMITTEE of the
BINGHAM COUNTY REPUBLICAN
CENTRAL COMMITTEE, and MATTHEW
THOMPSON,
Plaintiffs,

v.

IDAHO REPUBLICAN PARTY,
Defendant.

Case No. CV06-23-1418

MEMORANDUM IN SUPPORT OF
MOTION FOR TEMPORARY
RESTRAINING ORDER AND
PRELIMINARY INJUNCTION

I. STATEMENT OF THE CASE

Despite her public claims to be enforcing the rules of the party, this case arises from the refusal of the chairwoman of the Idaho Republican Party, Dorothy Moon, to follow the rules adopted by the party—explicitly and by reference—in relation to an election held by the Bingham County Republican Central Committee to fill a vacancy occasioned by a chairman who was resigning.

On the basis of an anonymous complaint, Moon issued a decision contrary to recognized rules that the Committee's election of officers was void and called a meeting for a new election. This is a continuation of a systematic conspiracy by Moon and her allies in the party to declare void the elections of persons with whom they don't agree and re-vote under circumstances carefully manipulated and choreographed to elect persons sympathetic to Moon and her aims.

Still worse, Moon intends to use this approach to select the nominees to fill the vacant position of Bingham County Prosecuting Attorney.

As the only ultimate check on Moon's decisions within the party is the State Central Committee, and as the State Central Committee is made up of the very positions Moon has sought to replace—by fiat—with her allies, the more Moon is successful in this pursuit, the less likely she is to be held to account within the organization.

A. Statement of Facts

On June 15, 2023, at the June regular meeting of the Bingham County Republican Central Committee (hereinafter BCRCC), Chairman Dan Cravens announced his intention to resign because he was moving out of state. (Decl. of C. Cannon, Ex A).

On July 13, 2023, one week prior to the July regular meeting, Chairman Cravens distributed a notice via email to the entire Committee that he was resigning effective 8/1/2023 and that there would be an election to fill his vacancy at the regular meeting to be held July 20, 2023.(Decl. of C. Cannon, Ex. B).

At the meeting two people attended by Zoom. The first, Jordan Johns, is an alternate precinct committee person and was not empowered to vote that evening. The second, Josh Sorensen, was a voting member of the BCRCC. (Decl. of C. Cannon, Ex. C)

BCRCC member Mark Cowley inquired whether Sorensen would be permitted to vote in the election of officers, and he was informed by Cravens that he would not. Although there was an unsuccessful motion to “table” the election of a new chairman, there were no objections to the election raised once the elections commenced. Elections were held to fill the position of chairman, which was filled by Matt Thompson, and to fill his previous positions (state committeeman and first vice-chair) once elected. Jordan Johns was elected to fill the position of first vice-chair; Ben Fuhrman was elected state committeeman, leaving open his previous position of youth committeeperson which was filled by Jedediah Russell (who held no office previously). (Decl of C. Cannon, Ex. C; Decl. of M Thompson, ¶¶ 7-12).

On August 21, 2023, Chairwoman Moon sent a complaint to the BCRCC, keeping the complainant anonymous, citing the failure to follow certain party rules in the election of officers. (Decl. of M. Thompson, Ex. A). This notice of complaint is contemplated in Idaho Republican Party State Rules (hereinafter “State Rules”) Art XII, Sec. 3(a) and (b). (Decl. of M. Thompson, Ex. E). Although State Rules require that a complaint be made by an “aggrieved party,” no showing was made to demonstrate that the complainant was an aggrieved party.

On September 5, 2023, Chairwoman Moon sent another letter to the BCRCC containing her decision that the July election of officers was void and that, pursuant to State Rules, she would call a meeting at an appropriate time. (Decl. of M. Thompson, Ex. B). The September 5 decision satisfies the requirement contained in Art. XII, Sec. 3(c), State Rules, that the Chairperson issue a decision within 60 days of receiving a complaint.

On September 11, 2023, Chairwoman Moon sent several members of the BCRCC an email announcing a meeting to elect new officers on September 18, 2023—a date where several regular members of the BCRCC were known to be out of town. (Decl. of M. Thompson, ¶11 & Ex. C)

Additionally, Moon failed to notify all members of the BCRCC of the meeting—notably, County Commissioner and precinct committeeman Mark Bair didn’t receive notice of the meeting. (Decl. of M. Bair). However, remarkably extremist group Conservatives of Bingham County Conservatives sent out an email about the meeting approximately twenty (20) minutes *before* the email was sent notifying the BCRCC of the meeting. (Decl. of J. Johns, Ex. A). Also noteworthy is the fact that the Bingham County Conservatives’ email stated the reason for the special meeting to be for the purposes of selecting a new county prosecuting attorney. *Id.* No mention of that was made in the email to the BCRCC.

Moon’s September 11 email also provided, in bold type, that any meeting the BCRCC held before a new chairman was elected would be void, despite the State Rules, County Bylaws, and Robert’s Rules of Order all providing otherwise. (Decl. of M. Thompson, Ex. C)

On September 14, 2023, Matt Thompson filed an appeal with the first vice chairman, Daniel Silver, who is chairman of the Judiciary Committee. (Decl. of M. Thompson, ¶22, Ex. F) The State Rules provide that any decision of the chairperson may be appealed to the Judiciary Committee within 30 days of a decision. Art. XII, Sec. 3(d). That same date, Silver issued a letter stating that the chairwoman’s decision couldn’t be enforced until the appeal had been decided. (Decl. of M. Thompson, Ex. G) Nonetheless, Moon refused to acknowledge whether she intended to cancel her meeting scheduled for September 18, 2023. (*Id.*, ¶26, Ex. H) This move threatens to deprive Plaintiffs of their appeal rights under the State Rules and to interfere with the BCRCC’s quasi-governmental obligations.

1. Power County

The scheduled September 18, 2023 isn’t the first “re-vote” meeting for which Moon has manipulated attendance to ensure a favorable result. In December 2022 it became necessary to

hold a meeting to fill various offices on the Power County Republican Central Committee, including the position of state committeewoman. They called a meeting in cooperation with the Idaho Republican Party, and the state party designated Trent Clark to preside in the absence of an elected chair. However, by the day of the meeting some committee members had contracted COVID and the meeting was re-announced for two weeks later. The Committee is comprised of only three members. (Decl. of L. Anderson).

Two weeks later, the state party designated Terell Tovey to preside over the meeting. Tovey was unable to attend in person and presided over the meeting remotely. The Committee proceeded to elect officers. (*Id.*)

In February 2023, Chairwoman Dorothy Moon declared their December election of officers void. She announced her own meeting to elect officers to be held in March. Mark Fuller, a vice-chair of the state party and someone with whom Chairwoman Moon is closely, sent committee member Laura Anderson correspondence about the meeting stating that it was to begin at 7:00 p.m. on March 21, 2023. (*Id.*)

Anderson arrived at the meeting by 6:35 p.m. on March 21, 2023. By then, the election of officers had concluded. She learned that the others had been notified the meeting was at 6:00 p.m. Since she wasn't there to nominate an alternative, the position of state committeewoman was filled by someone far more sympathetic to Chairwoman Moon than the person whose December election had been declared void. (*Id.*)

2. *Structure of State Central Committee*

As previously noted, a decision of the chairperson can be appealed to the Judiciary Committee. A decision of the Judiciary Committee, in turn, can be appealed to the State Central Committee. Art XII, Sec. 7, State Rules.

The State Central Committee is composed of, *inter alia*, the chairperson, state committeeman, state committeewoman, and youth committeeperson from each county. Art. I, Sec. 4, State Rules. Therefore, the more of these positions that are filled with people sympathetic to Moon, the more Moon is sure to escape accountability for simply declaring county officers “unelected” and staging her own choreographed elections to ensure her preferred people are elected.

Each of the three positions filled in Bingham County in June are positions that sit on the State Central Committee, making them attractive targets for Moon and company.

B. Summary of Dispute

As a preliminary matter, both State Rules and the Bylaws of the Bingham County Republican Central Committee (hereinafter “County Bylaws”) adopt by reference Robert’s Rules of Order for any matter not specifically addressed in the Rules bylaws. Rules of the Idaho Republican Party, Art. VII, §2; Bylaws of the Bingham County Republican Central Committee, Art. IX (Decl. of M. Thompson, Ex. D).

Art. IV, Section 9 of the State Rules provides:

If the office of the County Chairman becomes vacant, by reason of resignation, death or otherwise, the Vice Chairman shall assume all duties of the Chairman and, within thirty (30) days after giving at least seven (7) days notice, call a Central Committee meeting for the purpose of electing a new County Chairman. If the Vice Chairman does not call such meeting within thirty (30) days, the State Chairman shall call a county Central Committee meeting with seven (7) days notice, for the purpose of electing a new County Chairman.

The Bylaws of the Bingham County Republican Central Committee contain a similar requirement. Art. III, §6(d). The Bingham County bylaws further provide that a resignation be in writing. Art. II, §6(a).

1. Lack of Notice

Moon's complaint cited as an issue the lack of appropriate notice. However, Craven's email was circulated to the BCRCC on July 13—7 days before the July 20 meeting. Therefore, the 7-day notice requirement was met.

Cravens' email would count as a written resignation, effective August 1. Both State Rules and County Bylaws refer to the triggering event for the timing of an election as the vacancy of the office. The office became (or was set to become) vacant on August 1, 2023. Both State Rules and County Bylaws require an election of a replacement "within thirty (30) days" of the vacancy. Neither set of guiding documents explicitly state that the election must occur within 30 days "after" the vacancy. Robert's Rules of Order is similarly silent. However, Robert's Rules of Order do provide that "The Power to appoint or elect persons to any office or board carries with it the power to fill any vacancy occurring in it, unless the bylaws expressly provide otherwise." RONR, 12th Ed., §47:57, P. 445.

Therefore, the central committee had the authority to fill the vacancy in any way not inconsistent with the bylaws of the state and county. Since there is no express prohibition on filling a vacancy in advance, the central committee's apparent interpretation of the term "within 30 days" to mean 30 days before or after was within its prerogative.

2. Violation of Remote Meeting Rule

Moon's complaint also alleged a violation of the State Rules governing remote meetings.

Article XI of the state party rules provides:

Section 2. The electronic meeting must allow for all attendees, both physical and electronic, to hear each other at the same time. If video conferencing is used, all attendees must be able to see each other at the same time. The electronic meeting service used by the committee must support verification and reporting of who joins the meeting electronically.

Section 7. In meetings where some or all committee members attend electronically, all votes must be recorded for the minutes by name unless votes are unanimous. No votes requiring a secret ballot may be conducted if some or all committee members are attending electronically.

At the July meeting, there were technical issues that affected the ability to communicate and the elections were conducted by secret ballot. However, the rules were nonetheless not broken.

The attendance by Zoom by Mr. Johns, as a non-voting member, should be of no consequence. The attendance by Zoom of Mr. Sorensen would have been of consequence had the ruling of the chair not excluded him from participation. In essence, he was deemed to not officially be in attendance and not allowed to vote. The only person who can raise issue with that ruling is Mr. Sorensen, who was excluded from the meeting.

3. Voiding of an Election not Provided for in any Applicable Rule

Once a vacancy has been filled, it cannot be rescinded or reconsidered. RROR, §35:6, p. 291. The only way to contest an election is to raise a point of order. RONR §46:49, p. 423. In order to be timely, a point of order must be raised immediately upon the announcement of the vote. RROR, §23:5, p. 236. Failure to do so is deemed to be a waiver of the objection. Neither State Rules nor County Bylaws provide for an election to be voided.

Here, the minutes reflect a pre-election inquiry to Mr. Sorensen's involvement. However, once it was established that Mr. Sorensen would not vote, the committee seemed to be satisfied. The minutes reflect no subsequent objection. Therefore, since there was no timely point of order raised, the objection is waived.

The terms of all County Central Committee offices terminate after the even-year May primary election. Art. IV, Sec. 2(a) County Bylaws; Art. IV, Sec. 4 State Rules.

C. Quasi-Governmental Obligations

Bingham County Prosecuting Attorney Paul Rogers, a Republican, resigned his office on September 1, 2023. Under the provisions of §59-906, Idaho Code, the BCRCC is tasked with providing a list of names to the County Commission to fill his vacancy. According to the Bingham County Conservatives email, Moon as the agent of Defendant, intends to interfere with that process

II. Discussion

The question before the Court is whether a temporary restraining order should issue; and, later, if a preliminary injunction should issue. As will be discussed below, it is unnecessary for Plaintiffs to show that they would be successful on all, or even most, of their substantive disagreements with Chairwoman Moon. It is sufficient to show that Plaintiffs are entitled to any part of the relief sought. For purposes of Plaintiffs' motions for temporary restraining order and preliminary injunction, Plaintiffs seek to focus the Court's attention on their right to an appeal before Moon's decision is enforced.

A. Jurisdiction

This dispute resounds in contract law. The bylaws of an organization are "equivalent to contracts among the members" and are enforceable accordingly. *Twin Lakes Vill. Prop. Ass'n, Inc. v. Crowley*, 124 Idaho 132, 135, 857 P.2d 611, 614 (1993). Actions taken in violation of an organization's bylaws are void. *Kemmer v. Bob Newman*, 161 Idaho 463, 466, 387 P.3d 131, 134 (Idaho 2016) quoting *Twin Lakes Vill. Prop. Ass'n, Inc.*, 124 Idaho at 136, 857 P.2d at 615 (declaring an amendment to the bylaws that violated the original bylaws was void); *Glahe v. Arnett*, 38 Idaho 736, 741, 225 P. 796, 798 (1924) (noting that actions taken at a meeting called in violation of the bylaws were void).

Accordingly, this Court has as much jurisdiction over the dispute complained of herein as it would with any other contract dispute.

B. Temporary Restraining Order Standard

In general, a court has the power to order the preservation of the status quo while it determines its own authority to grant relief..." *Hayes v. Towles*, 95 Idaho 208, 212, 506 P.2d 105, 109 (Idaho 1973). Here, the meeting to be held to replace the BCRCC officers is scheduled for September 18, 2023. After that meeting, any attempt to litigate Plaintiffs' complaints—judicially or within the party—will be moot. As noted before, under Robert's Rules of Order, once an election occurs it cannot be rescinded or reconsidered. RONR, §35:6, p. 291.

"A temporary restraining order is...a restraint on the defendant until the propriety of granting an injunction *pendente lite* can be determined, and it goes no further than to preserve the status quo until that determination." *Rowland v. Kellogg Power & Water Co.*, 40 Idaho 216, 227, 233 P. 869, 873 (Idaho 1925). Plaintiffs respectfully request the preservation of the status quo long enough for a hearing on the merits of their motion for preliminary injunction.

C. Preliminary Injunction Standard

To demonstrate the appropriateness of a preliminary injunction, Plaintiffs must demonstrate two things: First, Plaintiffs must demonstrate that they are likely to succeed on the merits. *Planned Parenthood Great NW. v. State*, 49615/49817/49899, slip op at 8 (Idaho Jan. 5, 2023); Rule 65(e)(1), I.R.C.P. Second, that Plaintiffs will suffer irreparable injury should a preliminary injunction no issue. *Brady v. City of Homedale*, 130 Idaho 569, 572, 944 P.2d 704, 707 (Idaho 1997)

1. *Likelihood to Succeed on the Merits*

As previewed above, it is unnecessary for Plaintiffs to demonstrate that they are entitled to all the relief they seek, merely that they are entitled to part of the relief demanded. "On an application for a preliminary injunction, it is not necessary that a case should be made out that would entitle complainant to relief at all events on the final hearing. If complainant has made out a prima facie case or if from the pleadings and the conflicting affidavits it appears to the court that a case is presented proper for its investigation on a final hearing, a preliminary injunction may issue to maintain the status quo." *Farm Service, Inc. v. U.S. Steel Corp.*, 414 P.2d 898, 906, 90 Idaho 570, 578 (Idaho 1966); Rule 65(e)(1), I.R.C.P. (preliminary injunction is appropriate "when it appears by the complaint that the plaintiff is entitled to the relief demanded, and that relief, **or any part of it**, consists of restraining the commission or continuance of the acts complained of..."), emphasis added.

As previously mentioned, at this posture of the case, Plaintiffs rely on the denial of their appellate rights under State Rule Art. XII, Sec. 3 if the September 18 meeting is allowed to proceed. Plaintiffs assert that their right to a stay of enforcement of Chairwoman Moon's September 5 decision is clear and unambiguous. It is unnecessary for the Court at this point to get into the minutia of party rules and Robert's Rules of Order to decide whether Plaintiffs will prevail on the ultimate question of whether their July 20 election was proper. The need to maintain the status quo is clear enough on the single issue of preserving Plaintiffs' appellate rights.

A denial of a preliminary injunction (and, by extension, a temporary restraining order) offends the balance of equities more than the issuance of one. "A temporary injunction will not usually be allowed where its effect is to give the plaintiff the principal relief he seeks, without bringing the cause to trial, neither should a preliminary injunction be dissolved where its effect

would be such as to give the defendant the relief he seeks without bringing the cause to trial.” *Lawrence Warehouse Co. v. Rudio Lumber Co.*, 89 Idaho 389, 405 P.2d 634 (Idaho 1965), internal citations omitted. The issuance of a preliminary injunction doesn’t permanently establish that the July 20 elections were valid; however, the denial of a preliminary injunction would permit Defendant to gain its ultimate goal in this case.

2. Irreparable Injury

An irreparable injury is "an injury that cannot be adequately measured or compensated by money and is therefore often considered remediable by injunction." Black's Law Dictionary 856 (9th Ed. 2009) quoted with approval in *McCann v. McCann*, 275 P.3d 824, 835, 152 Idaho 809, 820 (Idaho 2012).

Here, there is no clear way that Plaintiffs could be restored to their offices if they are ultimately successful on the merits; and, that’s especially true given the fact that all terms expire in May 2024. Further, once Plaintiffs’ rights under the State Rules are abrogated, there is no way to reverse that. There is no way to adequately measure such an injury monetarily; therefore, irreparable injury would occur.

Further, irreparable injury would occur if Plaintiffs weren’t permitted to conduct the business for which they were elected in July. They have a quasi-governmental function in choosing nominees for Bingham County prosecuting attorney. See §59-906, I.C. In this regard, Moon is doing more than merely breaching a private contract—she is interfering with the operations of government. As the Supreme Court noted, “The party takes its character as a state agency from the duties imposed upon it by state statutes; the duties do not become matters of private law because they are performed by a political party.” *Smith v. Allwright*, 321 U.S. 649, 664 (1944). The

issuance of a preliminary injunction enjoining Moon's September 18 meeting and permitting Plaintiffs to operate consistent with their mandate and charter is necessary for the public good.

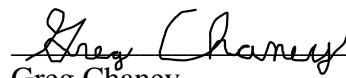
III. Conclusion

Plaintiffs pray the Court:

1. Enter a temporary restraining order enjoining Defendant from conducting a meeting for election of BCRCC officers or for the selection of nominees for county prosecutor;
2. Set a hearing consistent with Rule 65, I.R.C.P., for Plaintiffs' Motion for Preliminary Injunction to be heard; and,
3. Issue a Preliminary Injunction enjoining Defendant from conducting an election of officers, directing Defendant to comply with the appeals process within State Rules, and permitting Plaintiffs to conduct BCRCC business.

09/14/2023

Date



Greg Chaney