

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

JOHN CANEGATA, in his capacity as State
Chairman of the Republican Party of the
United States Virgin Islands, and ROBERT
MAX SCHANFARBER, in his capacity as
Secretary of the Republican Party of the
United States Virgin Islands, BOTH ACTIN
ON BEHALF OF THE REPUBLICAN
PARTY OF THE UNITED STATES VIRGIN
ISLANDS,

Plaintiff,

v.

HERBERT SCHOENBAUM; HOLLAND
REDFIELD; JAMES OLIVER; FRED
VIALET, JR.; LEIGH F. GOLDMAN; and
WARREN B. COLE,

Defendants.

SX-16-CV-324

ACTION FOR INJUNCTIVE
RELIEF; TEMPORARY
RESTRAINING ORDER;
PRELIMINARY
INJUNCTION; PERMANENT
INJUNCTION

MOTION TO DISMISS

Defendant Warren B. Cole, by counsel, moves to dismiss the Complaint for failure to state a cause of action or claim for relief that can be granted by this Court. In brief: 1) Plaintiffs rely entirely on "rules" claimed to have been passed at a meeting never properly noticed (and thus void); and 2) Plaintiffs are asking the Court to unconstitutionally usurp the power of the Republican National Committee to determine that group within the Virgin Islands with which the national Republican Party is, in fact, affiliated. No matter how the "facts" are presented, this Court cannot make a determination of whether Plaintiffs or Defendants are the legitimate representatives of

the Republican Party of the Virgin Islands under the current Rules of the Republican Party (which are determinative of the issue). Thus, this case should be dismissed for want of justiciability.

I. PLAINTIFFS RELY ON FACIALLY INVALID "RULES."

At paragraphs 13 and 14 of their Complaint, Plaintiffs rely on a May 6, 2016 "duly noticed" special meeting of the Territorial Committee, at which they claim the Committee voted to hold a party convention and also adopted rules for the selection of candidates for public office and for the election of party officers. Attached as Exhibit A is the properly authenticated "notice" of that meeting¹ - including the email by which it was transmitted. As shown in the declaration, by the email date and time, and the notice of meeting, Members of the Territorial Committee (other than the clique to which Plaintiffs belong) were given no more than 63 minutes' notice of a meeting to be held in St. Thomas at 7:00 p.m. that evening, when there were no commercial flights available between islands and no means of attendance whatsoever by persons not having been given advance notice of the meeting. Indeed, the notice did not even offer a means of attendance by conference call or other electronic means commonly used to

¹ "[A] court may consider an undisputedly authentic document that a defendant attaches as an exhibit to a motion to dismiss if the plaintiff's claims are based on the document." *Pension Benefit Guar. Corp. v. White Consolidated Indus.*, 998 F.2d 1192, 1196 (3d Cir. 1993). *Accord*, *U.S. Express Lines v. Higgins*, 281 F.3d 383, 388 (3d Cir. 2002).

allow meetings in the Virgin Islands. By design, this “meeting” was limited to a minority of the Territorial Committee that wished to foist its wishes on the Committee Majority by mere stealth and deceit.

The Republican Party of the U.S. Virgin Islands and its Territorial Committee are subject to the general principles of corporate governance, just as any other corporation or unincorporated association. Even in the absence of a provision of a charter or by-laws concerning notice, “reasonable notice to stockholders entitled to vote is a prerequisite to the validity of a special meeting of stockholders.” *Bryan v. Western Pac. R. Corporation*, 35 A.2d 909, 913, 28 Del.Ch. 13, 23 (DEL.CH. 1944) (citing *Toombs v. Citizens' Bank*, 281 U.S. 643, 50 S.Ct. 434, 74 L.Ed. 1088 (1930); 5 Fletcher Cyc. of Corp. § 2006; 2 Thompson on Corporations § 924; 2 Machen Modern Law of Corporations § 1198; 18 C. J. S., Corporations, § 544, p. 1228). The purpose of the time-notice requirement is to “to allow a shareholder sufficient time to arrange to attend the meeting” and to give the shareholder a “sufficient opportunity to study contemplated action at the meeting and the legality thereof.” *Darvin v. Belmont Industries, Inc.*, 199 N.W.2d 542, 546, 40 Mich. App. 672, 680-81 (Mich. App. 1972). In the absence of adequate notice, actions taken at such a meeting are void. *See, e.g., Rare Earth, Inc. v. Hoorelbeke*, 401 F. Supp. 26 (S.D.N.Y. 1975); *Knox v. C.I.R.*, 323 F.2d 84 (5th Cir. 1963); *Hayes v. Canada, Atlantic & Plant S.S. Co.*, 181 F. 289 (1st Cir. 1910); *Webber v. Webber Oil Co.*, 495 A.2d 1215 (Me. 1985); *Mercantile*

Library Hall, Co. v. Pittsburgh Library Ass'n., 173 P.a. 30 (Pa. 1896); *Marine Services Unlimited, Inc. v. Rakes*, 918 S.W.2d 132, 323 Ark. 757 (Ark. 1996); *Stone v. American Lacquer Solvents Co.*, 345 A. 2d 174, 463 Pa. 417 (Pa. 1975); *Hill Dredging Corp. v. Risley*, 114 A. 2d 697, 18 N.J. 501 (N.J. 1955); *Lycette v. Green River Gorge*, 153 P. 2d 873, 21 Wash. 2d 859 (Wash. 1944); *Valerino v. Little*, 490 A. 2d 756, 62 Md. App. 588 (Md. App. 1985).

II. THE COURT CANNOT INTERVENE IN INTERNAL NATIONAL PARTY AFFAIRS - THE CASE IS NOT JUSTICABLE.

As shown by Exhibit B to the Complaint, a majority of nineteen (19) Members of the Territorial Committee of the Republican Party of the U.S. Virgin Islands (the "Committee Majority")² have declared their lack of confidence in the leadership of the State Chairman and have demanded that a Convention be called to reorganize the party and elect new leadership. That Convention has been called, and will proceed on May 28, 2016. Plaintiffs do not and cannot claim to be able to enjoin the Convention from going forward. And of course the Court cannot interfere consistent with the Committee Majority's rights of free assembly guaranteed under the First Amendment. *See, e.g.,*

² Assuming no vacancies, the Territorial Committee consists of thirty (30) elected Members in accordance with 18 V.I.C. § 303. In addition, there are five (5) *ex officio* Members (the State Chair, the National Committeewoman, the National Committeeman, and two elected Republican Members of the Board of Elections); thus a maximum of 35 Committee Members. Plaintiffs seem to have attempted to stack the Committee with an additional eight "members" at their *faux* meeting of May 6, 2016 (see Complaint, paragraph 22). As noted in the opening section, that "meeting" is void. In any event, Plaintiffs do not argue that the persons signing the convention demand are not Committee Members.

NAACP v. Alabama ex rel. Patterson, 357 U.S. 449 (1958). Plaintiffs' "claim" is thus limited to an irrelevant objection to the Committee Majority's use of the emblems of the Republican National Committee in aid of the Convention (which is mooted by the undersigned's "Informative Notice" filed on May 20, 2016).

However, the more basic issue is presented by the plain language of 18 V.I.C. § 301(a), which concerns itself with "Any political party in the Virgin Islands which is the officially recognized affiliate of ... the Republican National Committee ... " (emphasis supplied). Thus, the real question presented by Plaintiffs' objection to the use of a symbol or insignia of the Republican National Committee necessarily depends on who is "recognized" by the Republican National Committee - a question that is entirely within the purview of the national party apparatus, and cannot be adjudicated by this Court. See, e.g., *Cousins v. Wigoda*, 419 U.S. 477, 95 S.Ct. 541, 42 L.Ed.2d 595 (1975); *Democratic Party of U. S. v. Wisconsin ex rel. La Follette*, 450 U.S. 107 (1981); *Ripon Soc., Inc. v. National Republican Party*, 525 F.2d 567, 575 (D.C. Cir. 1975).

Ultimately, these matters will be decided by the Republican National Committee when the competing results of two party conventions are presented to the RNC for acceptance and ratification. The RNC is not, and cannot be, a party to this case. And even if the RNC were made a party, this Court could not direct the RNC to recognize the results of one convention over another.


In short, there is no justiciable controversy. The concept of justiciability is clearly explained by *Yancy v. Shatzer*, 97 P.3d 1161, 1163 (Or. 2004) as follows: “[J]usticiability contemplates ‘that the court's decision in the matter will have some practical effect on the rights of the parties to the controversy.’ *Brumnett v. PSRB*, 315 Or. 402, 405, 848 P.2d 1194 (1993). Encompassed within the broad question of justiciability are a constellation of related issues, including standing, ripeness, and mootness. For example, this court has recognized that, even if a case is otherwise justiciable, the court will dismiss it as moot if a ‘decision no longer will have a practical effect on or concerning the rights of the parties.’ *Id.* at 406, 848 P.2d 1194. This court also has observed that ‘[m]ootness is a species of justiciability, and a court of law exercising the judicial power of the state has authority to decide only justiciable controversies.’ *First Commerce of America v. Nimbus Center Assoc.*, 329 Or. 199, 206, 986 P.2d 556 (1999).”

In reality, the rights of the parties will be decided by the RNC in proceedings uniquely suited to intra-party conflicts. This Court should exercise its discretion and refuse to intervene. The case should be dismissed.

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HUNTER & COLE
Attorneys for Warren B. Cole

DATED: May 25, 2016

By:  _____

Warren B. Cole, Esq.
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Tel. (340) 773-3535
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CERTIFICATE OF SERVICE

It is hereby certified that on 25th day of May, 2016, the foregoing was served on the following by first class mail:

Mark W. Eckard, Esq.
5030 Anchor Way, Suite 13
Christiansted, VI 00820

 _____

Exhibit A

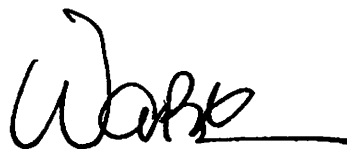
DECLARATION OF WARREN B. COLE

1. I am an adult citizen of the Virgin Islands and make this declaration based upon personal knowledge, except where specifically stated that averments are made upon information and belief.
2. I am a Member of the Territorial Committee of the Republican Party of the U.S. Virgin Islands, serve as Treasurer of the Committee, and am entitled to due notice of all meetings of the Territorial Committee.
3. Attached hereto is a copy of an email dated May 6, 2016 sent at 5:57:15 p.m. The email is from Mr. John Canegata, who was elected as State Chairman of the Republican Party of the U.S. Virgin Islands in the Primary Election of 2014.
4. Attached to the email was a PDF document entitled "Take Notice" dated May 6, 2016 (also attached hereto) announcing a meeting to be held at the Port Authority conference room at the St. Thomas Airport at 7:00 p.m. that evening, some 62 minutes and 45 seconds after notice was sent. That is the first and only notice I received regarding the proposed "meeting."
5. As the Court can take judicial notice, there are not commercial flights from St. Croix to St. Thomas at this time of night. Moreover, it is impossible to get from St. Croix to St. Thomas with less than 63 minutes' notice. Quite clearly this "notice" was given and intended to preclude attendance at the "meeting" by anyone who was not in full sycophantic with the desires of the State Chairman, or who might oppose any motions or business he intended to present to the Committee.
6. Although it has been customary for Territorial Committee meetings to include conference calls or other electronic means allowing participation by Members from all islands, there was no such provision in this case.
7. In the notice document itself, there is a brief "agenda" which contains no useful information concerning the subject matter of the meeting or any what substantive business might be conducted.
8. I have spoken with a number of my fellow Members, including Mr. Holland Redfield, II, the National Committeeman, and Jim Oliver, former State Chairman, none with whom I have spoken received notice any earlier than that I received less than 63 minutes prior to the "meeting."

Declaration of Warren B. Cole
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Pursuant to the provisions of 28 U.S.C. § 1746 and Super. Ct. R. 18, I declare under penalty of perjury under the laws of the United States and the laws of the United States Virgin Islands that the foregoing is true and correct. Executed on St. Croix, U.S. Virgin Islands.

Date: 5/24/16

A handwritten signature in black ink, appearing to read "Warren B. Cole", written over a horizontal line.

Warren B. Cole

From: [John Canegata](#)
To: [John Canegata](#)
Subject: From GOP Chairman John Canegata
Date: Friday, May 06, 2016 5:57:15 PM
Attachments: [Special Meeting Notice Territorial Committee May 6, 2016.pdf](#)
[Letter to John Canegata - Party Elections.pdf](#)

Dear Territorial Committee Member:

Attached is correspondence for your attention.

Sincerely,

John Canegata
State Chairman
Republican Party of the United States Virgin Islands

TAKE NOTICE

An emergency special meeting of the Territorial Committee is hereby called, pursuant to the *Rules, Policies and Principles* (herein the "*Rules*") of the Republican Party of the United States Virgin Islands.

The special meeting shall occur at 7 p.m. local time on Friday, the sixth of May in the year of our Lord two thousand and sixteen. The location is as follows:

Port Authority Conference Room
Cyril E. King Airport
St. Thomas
United States Virgin Islands

The agenda, as promulgated in accordance with the *Rules*, is beneath this correspondence. Attached is a letter from the Joint Board of Elections, forcing the Territorial Committee to act on an emergency basis.

Given in St. Croix this sixth day of May in the year of our Lord two thousand and sixteen.



John Canegata
State Chairman

AGENDA FOR THE EMERGENCY SPECIAL MEETING
OF THE
TERRITORIAL COMMITTEE
ON
FRIDAY, MAY 6, 2016,
AT
7 P.M.

1. Call to order.
2. Invocation.
3. Pledge of allegiance.
4. New business.
5. Adjournment.

PAID FOR BY THE REPUBLICAN PARTY OF THE VIRGIN ISLANDS.
NOT AUTHORIZED BY ANY CANDIDATE OR CANDIDATE'S COMMITTEE.