

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO
CIVIL DIVISION

OHIO HOUSE REPUBLICAN ALLIANCE,	:	Case No. 23 CV 7202
et al.,	:	
	:	Judge Serrott
Plaintiffs,	:	
	:	
v.	:	
	:	
JASON STEPHENS, et al.,	:	
	:	
Defendants.	:	

REPLY OF PLAINTIFFS TO DEFENDANTS' MEMORANDUM CONTRA
PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION
FILED APRIL 25, 2024

“[I]f due process notice is given and a clear record made of a majority vote to determine the control and administration of the LCF, this Court would likely enforce the statute.”

(Feb. 14, 2024 Order Denying Motion of Pltfs. for TRO at p. 3.) Plaintiffs heeded the Court’s directive and provided sufficiently advanced notice with a detailed agenda to all of the Ohio House Republican Caucus (“Caucus”) members for a meeting to be held on April 10, 2024 to vote on a Resolution to set forth the manner and method by which the Caucus’s Legislative Campaign Fund (“LCF”), currently known as the Ohio House Republican Alliance (“OHRA”), would be administered and controlled. A majority of Caucus members voted—and provided signatures affirming their votes—to pass a detailed Resolution providing the structure by which OHRA should be governed.

Defendants’ Memorandum Contra Plaintiffs’ Motion for Preliminary Injunction (“Memo Contra”) repeatedly mischaracterizes the issue before the Court and Plaintiffs’ requested relief. Plaintiffs are not asking this Court to settle an intraparty political dispute, nor do they ask it to create rules governing the Caucus. Instead, this litigation and Motion have been brought to

enforce the plain language of R.C. 3517.10(D)(3)(d)’s provision that “[e]ach legislative campaign fund shall be administered and controlled in a manner designated by the caucus” in light of the Resolution adopted at the April 10, 2024 Caucus meeting. (Am. Compl. Ex. 1.) Having no counter to the plain text of R.C. 3517.10(D)(3)(d), Defendants seek to invalidate the statute and render it meaningless by summarily declaring any question regarding the administration and control of OHRA a non-justiciable political issue. It is not. Instead, it is a question of statutory interpretation properly before this Court. The statute should be enforced and the Resolution given its full and lawful effect.

ARGUMENT

Defendants cite to numerous cases regarding the non-justiciability of “political questions” and courts’ refusal to interfere in the internal affairs of political parties, but the very case that Defendants attached to their Memo Contra contradicts their argument. (Memo Contra at p. 6.) *Rosenberger v. Paduchik*, Franklin C.P. No. 21CV007443 (May 27, 2022). The facts of *Rosenberger* are inapposite with the facts of this case. The claims brought in *Rosenberger* were dismissed because they dealt with bylaws of a political party, not legislative enactments. It is uncontested that the issue presented in this case and Motion is interpretation of a statute, R.C. 3517.10(D)(3)(d), not a rule or bylaw of a political party governing the internal workings of a political party. (Memo Contra at p. 3.)

I. Plaintiffs are likely to succeed on the merits.

Statutes have meaning. The Supreme Court of Ohio has repeatedly held “[w]hen the statutory language is plain and unambiguous, and conveys a clear and definite meaning, we must rely on what the General Assembly has said.” *Jones v. Action Coupling & Equip., Inc.*, 2003-Ohio-1099, ¶ 12, citing *Symmes Twp. Bd. of Trustees v. Smyth*, 87 Ohio St.3d 549, 553, 2000-

Ohio-470 (2000). Knowing the plain language of R.C. 3517.10(D)(3)(d) requires a finding that the Resolution is the Caucus’s designation of how OHRA is to be administered and controlled, Defendants offer red-herring arguments related to process, non-existent Caucus rules, and alleged and meaningless tradition and custom to distract from the plain text of the statute.

A. The Caucus has never voted to place Speaker Stephens in control of OHRA.

The Ohio House of Representatives and the Ohio House Republican Caucus are not synonymous. It is undisputed that the Ohio House of Representatives includes all members of the legislative body while the Ohio House Republican Caucus encompasses only Republican members of the Ohio House. (Memo Contra at pp. 7-8, citing Am. Compl. ¶ 13.) OHRA is the LCF for Republican House Caucus, not the full Ohio House of Representatives. Yet, Speaker Stephens testified “with that vote, in this case on January the 3rd, yes, that – that vote that made me speaker also made me the one responsible for the caucus fund.” (Deposition of Jason Stephens (“Stephens Dep.”)¹ at 72:13-23.) Defendants offer no explanation as to how the vote of one organization, the Ohio House of Representatives, can somehow also function as a vote of a wholly different organization, the Ohio House Republican Caucus. Further highlighting the speciousness of Defendants’ position, Speaker Stephens testified a majority of the Ohio House Republican Caucus did not even vote to elect him Speaker on January 3, 2023. (*Id.* at 72:10-12.) Meaning the vote from which Speaker Stephens purports to draw his power to administer and control OHRA was done so *against* the express votes of a majority of the Caucus members.

There has never been a vote of a majority of the Caucus placing Speaker Stephens in control of OHRA. (*Id.* at 73:14-23.) Speaker Stephens could have called a Caucus meeting at any time to properly acquire the position as head of OHRA. He has not done so. Instead, Defendants

¹ The transcript of the deposition of Jason Stephens was filed on June 13, 2024.

have chosen to ignore the April 10 meeting and the Resolution adopted by the Caucus and continued to operate OHRA in violation of R.C. 3517.10(D)(3)(d). (Am. Compl. Exs. 9-11.)

B. Defendants’ position that the Caucus lacks the power to designate how to administer and control OHRA no matter what process is used is contrary to law.

Defendants’ attack of the process surrounding the April 10 meeting and vote on the Resolution is a smoke screen to distract from their actual position: R.C. 3517.10(D)(3)(d) is meaningless. Defendants’ position is that Speaker Stephens is unilaterally and unalterably in control of OHRA for the remainder of the General Assembly. Speaker Stephens admitted as much during his deposition:

Q: If there was a properly called caucus meeting by you as speaker in which however many sufficient members attended, could there be a vote taken at the meeting as to how the caucus’s legislative campaign fund is administered and controlled?

A: I don’t believe so, no.

(Stephens Dep. at 70:18-71:1 (objection omitted).)

Such a position is breathtaking. R.C. 3517.10(D)(3)(d) states, “Each legislative campaign fund shall be administered and controlled in a manner designated by the caucus,” not administered and controlled in a manner designated by the Speaker of the House. But Defendants would have Speaker Stephens control all OHRA funds even if it was against the express wishes of every other member of the Caucus. Defendants’ position seeks to remove review of the administration and control of OHRA from the courts as a non-justiciable issue while also foreclosing it from any consideration or designation by the Caucus.

C. The April 10 Caucus meeting and vote on the Resolution was conducted with sufficient notice and process to create a clear record.

The Caucus previously elected Representative Phil Plummer as the Chair of OHRA at a January 2023 meeting. In its previous order denying Plaintiffs’ prior motion for a temporary

restraining order and preliminary injunction, this Court found certain procedural shortcomings with the January 2023 vote but stated it would likely enforce the statute should a clear record of the Caucus’s designation be made. With the April 10 meeting and vote on the Resolution, that record has now been made. (*See* Am. Compl. at ¶¶ 14-23.)

Defendants have gone to great lengths to attack the “validity,” an undefined word lacking any meaning in this context, of the April 10 meeting arguing: 1) Representative Plummer could not call a meeting of the Caucus, 2) there is no such role as Chair of the OHRA, and 3) any vote of the Caucus must have been taken by secret ballot. None of these arguments are persuasive or in any way dispositive as to the issue of administration and control of OHRA as defined by statute.

The April 10 meeting was scheduled for a date most Caucus members would already be in Columbus for Governor DeWine’s State of the State address. (Stephens Dep. at 60:2-13.) And all Caucus members were sent an invitation to the meeting five days in advance. (Am. Compl. Ex. 3.) Caucus members were also provided a notice from Representative Plummer stating the agenda for the meeting was to “[v]ote on a resolution to Determine Administration and Control of the Legislative Campaign Fund of the Republican Caucus of the Ohio House of Representatives.” (Am. Compl. Ex. 2.) Speaker Stephens testified he did not receive the meeting invitation but confirmed it was sent to his correct email address five days prior to the meeting. (Am. Compl. Ex. 3; Stephens Dep. at 36:4-15.) Nonetheless, Speaker Stephens admitted he was aware of the meeting prior to it occurring and chose not to attend. (Stephens Dep. at 38:8-11.²)

² Speaker Stephens instead chose to attend a meeting of the Appalachia Caucus as it was “absolutely” more important than the issue of administration and control of OHRA. (Stephens Dep. at 59:15-18.)

It is undisputed that prior to the April 10 meeting, there were no rules or bylaws governing the Caucus. (*See* Memo Contra at pp. 3-4.) Yet, Defendants argue that only Defendant Stephens may call a meeting of the Caucus in his capacity as Speaker of the House. (*Id.* at p. 9; Stephens Dep. at 10:16-19.) In the same breath, Defendants acknowledge a history of, but fail to challenge the “validity” of, numerous other prior Caucus meetings that were not called by the then Speaker of the House. (Memo Contra at pp. 9-10.) As there were no rules governing the Caucus, it necessarily follows there was nothing that prohibited Representative Plummer from calling the April 10 meeting as a member of the Caucus to which a quorum attended and voted in favor of the Resolution. (Mot. for Prelim. Inj. Ex. 2, Marilyn John Affidavit (“John Aff.”) at ¶¶ 6, 8 and at Ex. C).

Because there were no rules governing the Caucus, the April 10 meeting utilized Robert’s Rules of Order in order to create a clear record and assuage any procedural concerns. Representative Marilyn John served as clerk for the meeting. In this capacity, Representative John took attendance, conducted and tallied the roll call vote on the Resolution, collected each Caucus member’s signature memorializing their vote, and kept written minutes of the meeting. (*See* John Aff.) Representative John’s uncontroverted affidavit and testimony confirms the vote on the Resolution was 39 “yes” votes and 0 “no” votes. (*Id.* at ¶ 8.)

Defendants cited to certain portions of Robert’s Rules of Order regarding secret ballots while conveniently omitting the passages making it clear the vote on the Resolution was not required to be conducted via secret ballot. Robert’s Rules of Order states “[t]he bylaws of the organization may prescribe that the vote be by ballot (also known as secret ballot) in certain cases. . . . In cases in which there is no requirement that a vote be by ballot, a ballot vote can be ordered by a majority vote.” *Robert’s Rules of Order*, 45:19. Robert’s Rules further states that

secret ballots “are used only when expressly ordered by the assembly or prescribed by its rules.” *Id.*, 45:17. As there were no rules governing the Caucus and no evidence of the Caucus ever voting to require a secret ballot at the April 10 meeting, it was not necessary to conduct the vote on the Resolution via secret ballot.

Representative Phil Plummer’s title as “Chair”³ of OHRA is inconsequential. What is of consequence is the Resolution’s designation of powers given to Representative Plummer. (Am. Compl. Ex. 1 at § 2 a-k.) Defendants argue, “Simply put, Plaintiffs can point to no tradition or custom of electing a separate ‘Chair’ of OHRA.” (Memo Contra at p. 11.) Simply put, Plaintiffs don’t have to. Instead, Defendants have to somehow convince this Court the Resolution was not the Caucus’s designation pursuant to R.C. 3517.10(D)(3)(d), despite the Resolution’s text stating “in accordance with Ohio Revised Code §3517.10(D)(3)(d), the Republican Caucus of the Ohio House of Representatives wishes to designate the manner in which the Caucus’ Legislative Campaign Fund (the ‘LCF’) shall be ‘administered and controlled’ for the remaining portion of the 135th General Assembly.” (Am. Compl. Ex. 1.)

II. Plaintiffs have and continue to suffer irreparable harm.

Plaintiffs refer the Court back to its Motion for Preliminary Injunction detailing the irreparable harm they face by Defendants’ continued misuse of the OHRA funds. However, Plaintiffs wish to make one further point. Legislative Campaign Funds are unique organizations under Ohio law. LCFs can raise and spend large amounts of money and coordinate with the Caucus’s candidates for the Ohio House. *See* R.C. 3517.102. But R.C. 3517.10(D)(3)(d) states,

³ Defendants correctly point out that Plaintiffs denied their Requests for Admission that Representative Phil Plummer has never been the “Chair” or “Dean” of the Caucus. The reason for the denials is simple: Plaintiff’s Requests for Admissions contained the capitalized and undefined terms “Chair” and “Dean.” As Defendants have shown a proclivity to not give words their ordinary meaning, Plaintiffs were forced to deny the requests as they are unaware how Defendants define those terms.

“Each state political party shall have only one legislative campaign fund for each house of the general assembly.” Meaning by law there can only be four LCFs and only one belonging to the House Republican Caucus. This means that the majority of the Caucus members, those voting in favor of the Resolution, are not only currently foreclosed from administering and controlling OHRA as they see fit, but they are also forbidden by law from forming another LCF with which they can coordinate with, raise money for, and spend funds on behalf of the Caucus’s candidates for the November election. This presents a scenario of clear irreparable harm whereby the House Republican Caucus is the only political party in the Ohio General Assembly that is currently unable to administer and control its own LCF in the months leading up to the November general election. The inability of the Caucus to fundraise and spend its LCF’s money in the way it sees fit prior to the November election is a tremendous electoral disadvantage for which monetary damages cannot later adequately compensate.

III. Defendants mischaracterize the effect of Plaintiffs’ proposed order on the OHRA funds and candidate spending.

Plaintiffs are in fact asking this Court to stop Defendants Stephens and LaRe from exercising any control over OHRA by enforcing the Resolution. Defendants’ self-serving claim that the “OHRA account is being used for ... its intended purpose” is simply false. The Resolution adopted at the April 10 meeting details how OHRA is to be administered and controlled. Any spending by OHRA not in accordance with the Resolution, i.e., spending authorized by Defendants Stephens and LaRe, is improper. And Plaintiffs’ efforts to prohibit Defendants Stephens or LaRe from issuing statements purporting to be made on behalf of OHRA does not improperly stifle their free speech. Plaintiffs only seek to prohibit Defendants from issuing statements on behalf of OHRA because the Resolution demonstrates they lack the power to do so.

Defendants incorrectly state under Plaintiffs’ proposed order “that no money could be donated to or expended from the OHRA account pending the outcome of this litigation.” (Memo Contra at p. 14.) Plaintiffs are asking this Court for an order prohibiting Defendants from taking any action contrary to the Resolution. Such an order would also apply to both Defendants Winterset and Yuskewich. Representative Plummer has already sent correspondence to Winterset and Defendant Yuskewich⁴ in which he informed them of the Caucus’s April 10 vote, provided them with a copy of the Resolution, and sent instructions for filing a new designation of treasurer form. (Am. Compl. Ex. 9.) Defendants Winterset and Yuskewich have ignored Representative Plummer’s instructions, despite being provided with a legal opinion of the Caucus’s LCF’s long-time counsel instructing them to do so. (Am. Compl. Ex. 8.) Presumably, once receiving an order from this Court detailing that Defendants are to take no actions contra to the Resolution, Defendants Winterset and Yuskewich would begin to take instructions from Representative Plummer via the powers given to him by the Resolution. Any freezing of accounts or failure of OHRA to be able to raise and spend money would be as a result of Defendants’ non-compliance with the Court’s order. Defendants, particularly those with fiduciary duties, would open themselves up to exponentially increasing damages with such non-compliance.

CONCLUSION

For the aforementioned reasons, the Court should grant Plaintiffs’ motion and enforce the plain text of R.C. 3517.10(D)(3)(d) and the Resolution adopted by the Caucus on April 10, 2024.

⁴ Plaintiffs are perplexed at Defendant Yuskewich’s affidavit in which he states, among others things, that no one at Winterset has received any instruction from Representative Phil Plummer that he is in control of the OHRA funds. Correspondence from Representative Plummer to Mr. Yuskewich and Winterset detailing that exact thing has already been submitted to the Court. (Am. Compl. Ex. 9.)

Respectfully submitted,

/s/ James B. Hadden

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CERTIFICATE OF SERVICE

I hereby certify that on June 20, 2024, I electronically filed the foregoing with the Clerk of the Court by using the Court's eFile system, which will send a notice of electronic filing to the following:

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