

DISTRICT COURT
EL PASO COUNTY, COLORADO
Terry R. Harris Judicial Center
270 South Tejon Street
Colorado Springs, CO 80903

DATE FILED: September 4, 2015 2:05 PM
FILING ID: 8A66A961AC5B9
CASE NUMBER: 2015CV32584

Plaintiffs:

Robert Mitchell, James Lally, and Gary Anderson, on behalf of USA SHOOTING, INC., a Colorado corporation

Defendants:

Walton Eller, Jason Turner, Brett Tecklenburg, Mary Weeks, Joshua Richmond, and Janet Raab, in their capacity as board members of USA Shooting, Inc.

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Attorneys for Plaintiffs

VERIFIED COMPLAINT

Plaintiffs Robert Mitchell, James Lally, and Gary Anderson, on behalf of USA Shooting, Inc., file this Complaint against Defendants, Walton Eller, Jason Turner, Brett Tecklenburg, Mary Weeks, Joshua Richmond, and Janet Raab, in their capacity as board members of USA Shooting and state as follows:

PARTIES

1. USA Shooting, Inc. ("USAS") is a corporation organized and existing pursuant to the laws of Colorado, with its principal place of business located in Colorado Springs, El Paso County, Colorado.

2. Plaintiff Robert Mitchell is the Executive Director and Chief Executive Officer (“ED-CEO”) of USAS and has been a Director of USAS since 1996. He resides in Centennial, Colorado.
3. Plaintiff James Lally is the President of USAS and has been a Director of USAS since 1998. He resides in Upland, California.
4. Plaintiff Gary Anderson is the Senior Representative from USAS to the International Shooting Sport Federation (“ISSF”) and has been a Director of USAS since 1999. He resides in Oak Harbor, Ohio.
5. Defendant Walton (“Butch”) Eller, Jr. is Vice President of USAS has been a Director of USAS since 2013, and was a Director from 2003 to 2010. He resides in Katy, Texas.
6. Defendant Jason Turner has been a Director of USAS since 2010 and serves as the Athlete Representative - Pistol. He resides in Colorado Springs, El Paso County, Colorado.
7. Defendant Brett Tecklenburg has been a Director of USAS since 2014 and serves as the representative of the United States Army Marksmanship Unit (“USAMU”). He resides in Fort Benning, Georgia.
8. Defendant Mary Weeks has been a Director of USAS since 2013 and serves as the representative of the Athletes’ Advisory Council of the United States Olympic Committee. She resides in Phenix City, Alabama.
9. Defendant Joshua Richmond has been a Director of USAS since 2010 and serves as the Athlete Representative - Shotgun. He resides in Midland, Georgia.
10. Defendant Janet Raab has been a Director of USAS since 2010 and serves as the Athlete Representative - Rifle. She resides in Van Buren, Arkansas.

JURISDICTION AND VENUE

11. This court has subject matter jurisdiction over this action under Article VI, section 9 of the Colorado Constitution, C.R.S. §§ 7-126-401, 13-1-124(1)(a), 13-51-105, 13-51-106, and Rules 23.1 and 57 of the Colorado Rules of Civil Procedure.
12. This court has jurisdiction over Defendants because all claims against Defendants relate to Defendants’ actions as directors on USAS’s Board.
13. Venue is proper pursuant to Colo. R. Civ. P. 98(c).

GENERAL ALLEGATIONS

14. Plaintiff is recognized, pursuant to the Ted Stevens Olympic and Amateur Sports Act, as the national governing body for the sport of shooting in the United States. *See* 36 U.S.C. §2205.

15. USA Shooting (“USAS”) is governed by its Bylaws (the “Bylaws”), attached.

16. At the March 16, 2015 meeting of the USAS Board of Directors (“Board”), three separate votes were held for three At-Large Director positions.

17. At this meeting, Mr. Eller raised the claim that director Mr. Anderson’s term limit as a USAS director had not been appropriately waived by a 2/3 vote of the Board, and that Mr. Anderson was therefore not currently a director. Mr. Tom James, USAS legal counsel, confirmed that Mr. Anderson was a current director. Mr. Eller raised an objection to Mr. Anderson’s status as a director, which Ms. Weeks joined.

18. In response, Mr. James explained that the vote waiving Mr. Anderson’s term limit had already taken place when the Board unanimously nominated Mr. Anderson to run for Vice President of the International Shooting Sport Federation (“ISSF”) on March 1, 2014, and that to hold another vote on the issue was therefore not proper, nor was it on the agenda for the March 16 meeting.

19. At the March 16 meeting, Mr. Anderson was serving, and has served since 1999, in the director position reserved for the Senior ISSF Representative. The ISSF is the international federation for the sport of shooting. The Senior ISSF Representative from USAS is the USAS member who holds the highest rank at ISSF at the time.

20. On April 3, 2015, Defendants filed a grievance with the USAS Secretary under Article XXV, Section L of the Bylaws. This grievance claimed, among other things, that the March 16, 2015 election of the At-Large Directors was rendered invalid by Mr. Anderson taking part in the vote, on the basis that his term as a USAS director had expired and had not been renewed by a 2/3 vote under the Bylaws, Article XI, Section W.2. The Defendants further alleged that the President and ED-CEO improperly refused to hold a vote at the March 16, 2015 Board meeting on Mr. Anderson’s term renewal.

21. As relevant here, in the April 3, 2015 complaint, the Defendants also alleged that the vote re-electing Dr. Lally to an At-Large Director position was rendered invalid by Dr. Lally’s participation in that vote.

22. On May 13, 2015, Defendants scheduled a meeting of the Board to vote on the question of whether or not to waive Mr. Anderson’s eight-year term limit, but were unable to establish a quorum, as required to conduct business by Article XI, Section F of the Bylaws.

23. Plaintiffs proceeded to engage in good faith negotiations, brokered by the United States Olympic Committee (“USOC”), with Defendants to resolve the issues regarding Messrs. Anderson’s and Lally’s participation in the March 16, 2015 vote.

24. Plaintiffs and Defendants reached a tentative agreement to submit the issues to binding arbitration before the American Arbitration Association (“AAA”). However, on or around August 5, 2015, counsel contacted USAS on behalf of the Defendants and indicated that Defendants would not honor the tentative agreement brokered by the USOC.

25. Plaintiffs wish to resolve the questions of whether Mr. Anderson’s term limit was properly waived on March 1, 2014; whether Mr. Anderson was a director at the time of the March 16, 2015 vote nominating the three At-Large Directors; whether that March 16 vote was invalidated by Mr. Anderson’s participation; and whether Dr. Lally’s vote for himself invalidated the March 16 vote on Dr. Lally’s position as an At-Large Director.

ALLEGATIONS RELATED TO FIRST CLAIM FOR RELIEF

26. Article XI, Section K of the USAS Bylaws states that the USA Shooting Board is a staggered Board, with two divisions. One director in Division Two, which division’s term runs from Year 3 of one quadrennium to the first Board meeting in Year 3 of the following quadrennium, is designated as the “Senior ISSF Representative.” *See id.* That Board position is defined as follows:

Senior ISSF Representative. The senior USAS representative to the ISSF, as determined by ISSF position (i.e. Executive Committee, Administrative Council, Section Committee) or, if necessary, by the seniority in years of service as an ISSF official.

See id.

27. Article XI, Section W of the Bylaws states:

Term Limits. No member of the Board may serve more than eight years without a two (2) consecutive year interruption of service on the Board with the following exceptions:

1. If an athlete serves on the Board as an elected discipline representative, that term shall not count toward time served as an elected AAC Representative.

2. Due to the nature of the position, the term of the Senior Representative to the ISSF may be extended by a 2/3 vote of the Board membership.

3. Upon election as Chairman, the Chairman's opportunity to serve a second two (2) year term will be without limitation by the eight (8) year rule.

(Emphasis added.)

28. Article XIX of the Bylaws states, in part, that the Directors of USA Shooting "shall appoint nominees, representatives and alternates to the ISSF, in accordance with the ISSF Official Statutes, Rules and Regulations. Such appointment or nomination shall be made by voice or written vote, if the same is conducted at any meeting of the Board, or upon written ballot if the same is conducted at any other time."

29. Mr. Anderson has served at ISSF since 1978 as a member of the Administrative Council, from 1980 to 1990 as a member of the Executive Committee, and from 1990 to the present as a Vice-President.

30. Since 1999, Mr. Anderson has also occupied a director position on the USAS Board by virtue of his status as the Senior ISSF Representative. At all times during USAS's existence, Mr. Anderson has been the Senior ISSF Representative.

31. Since in or around 1999, USAS's Bylaws have provided for a director position for the Senior ISSF Representative.

32. The ISSF holds elections every four years. Accordingly, every four years, the USAS Board votes to nominate or re-nominate members for a position at ISSF. The USAS Board has unanimously nominated Mr. Anderson for a position at the ISSF in every such vote since the incorporation of USAS. Each time, this vote was considered the 2/3 vote to waive Mr. Anderson's term limit as a USAS director.

33. Plaintiffs claim that the above-described vote also serves as the vote to waive the relevant term limit for Mr. Anderson's USAS director position, per Article XI, Section W of the Bylaws.

34. The Board of Directors also includes director positions reserved for representatives of the National Rifle Association ("NRA"), the shooting sports industry ("NSSF"), and the armed forces ("USAMU"). It has historically been USAS's practice that the appointment of these representative directors to such positions also waives any relevant term limit for their directorship at USAS.

35. On March 1, 2014, the most recent USAS vote on nominations to the ISSF, the USAS Board voted unanimously to re-nominate Gary Anderson to run for Vice President at ISSF.

36. Mr. Anderson thereafter successfully ran for re-election as Vice President of ISSF.

ALLEGATIONS RELATED TO SECOND CLAIM FOR RELIEF

37. USAS's Bylaws do not prohibit a director from voting for himself in an election.

38. Article XI, Section CC of USAS's Bylaws state that Robert's Rules of Order, except where they conflict with the Bylaws, govern questions of order at Board meetings.

39. Robert's Rules of Order explicitly state that directors may vote for themselves for an office or position for which members are generally eligible. *Robert's Rules of Order Newly Revised*, 11th ed. (Da Capo Press, 2011, p. 407, l. 34 – p. 408, l. 6. Plaintiff's assert that Dr. Lally's vote for himself was therefore proper and was not prohibited under USAS's Bylaws or other applicable rules.

DERIVATIVE ACTION ALLEGATIONS

40. Plaintiffs bring this action pursuant to Colorado Rule of Civil Procedure 23.1 and C.R.S. § 7-126-401 on behalf of USAS to enforce the claims against the individual Defendants, which may properly be asserted by USAS and which USAS has failed to enforce.

41. At the time of Defendants' filing of their grievance on April 3, 2015 challenging the March 16, 2015 vote, Plaintiffs were, and are, directors of USAS. As a result, Plaintiffs have standing to bring this derivative action on behalf of USAS.

42. Plaintiffs have been unable to obtain the action they desire from the Defendant directors, because Defendant directors refuse to settle the issues or submit the issues to binding AAA arbitration, and Defendants have ceased to cooperate in resolving these issues.

43. Plaintiffs attempted to resolve these issues with Defendants. Defendants refuse to resolve these issues. Any further demand on Defendant directors would therefore be futile.

44. Plaintiffs will fairly and adequately protect the interests of USAS and its members in enforcing the rights of USAS against the Defendants. Plaintiffs' attorneys are and will prosecute this action diligently on behalf of USAS to insure the rights of USAS. Plaintiffs have no interests adverse to USAS.

FIRST CLAIM FOR RELIEF (Declaratory Judgment)

45. Plaintiffs restate and incorporate by reference each and every allegation contained in each paragraph above.

46. Plaintiffs claim that the Bylaws of USAS are the contract under which the USAS Board of Directors operates.

47. Plaintiffs claim that the Bylaws do not specify when the 2/3 vote waiving the Senior ISSF Representative's term limit must occur.

48. Plaintiffs claim that it has been the practice of the Board since the incorporation of USAS that the vote nominating a person to run for a position with the ISSF concurrently serves as the vote whether to waive the eight-year term limit if that person should be the Senior ISSF Representative.

49. Plaintiffs claim that the March 1, 2014 vote unanimously nominating Mr. Anderson to run for a position on the ISSF Board constituted a waiver of Mr. Anderson's eight-year term limit on the USAS Board, under USAS's Bylaws.

50. Plaintiffs claim that this vote and waiver complied with, and did not violate, USAS's Bylaws.

51. Plaintiffs claim that Mr. Anderson's participation in the March 16, 2015 election of At-Large Directors, and any alleged refusal of the President and ED-CEO to hold a vote on waiver of Mr. Anderson's term limit, were therefore proper.

52. Plaintiffs claim that Mr. Anderson's participation in the March 16, 2015 election did not invalidate the election results.

53. Upon information and belief, Defendants claim that Mr. Anderson's term limit had not been waived by the March 1, 2014 vote, that Mr. Anderson was not a director at the time of the March 16, 2015 election, and that Mr. Anderson's participation in voting in that election rendered the results invalid.

54. Declaratory relief is appropriate under C.R.S. § 13-51-101, *et. seq.*, and C.R.C.P. 57, because an actual legal controversy has arisen and now exists between Plaintiffs and Defendants as to whether Mr. Anderson's participation in the March 16, 2015 vote was proper under USAS's Bylaws, and whether the President and ED-CEO acted rightfully in refusing to hold a vote on March 16, 2015 regarding Mr. Anderson's term limit, because the vote on March 1, 2014 re-nominating Mr. Anderson to run for Vice-President of the ISSF had simultaneously re-confirmed his term as a USAS director and waived the term limit.

55. A declaratory judgment by this Court will remove uncertainty and terminate the controversy giving rise to this proceeding.

**SECOND CLAIM FOR RELIEF
(Declaratory Judgment)**

56. Plaintiffs restate and incorporate by reference each and every allegation contained in each paragraph above.

57. Plaintiffs claim that the Bylaws of USAS are the contract under which the USAS Board of Directors operates.

58. Plaintiffs claim that Dr. Lally was entitled to vote for himself in the March 16, 2015 election of At-Large Directors, the vote for that position was therefore valid, and Dr. Lally is properly serving as a USAS director at this time.

59. Upon information and belief, Defendants claim that the vote for Dr. Lally's director position was invalid because Dr. Lally could not vote for himself, and that he is therefore not a current USAS director.

60. Declaratory relief is appropriate under C.R.S. § 13-51-101, *et. seq.*, and C.R.C.P. 57, because an actual legal controversy has arisen and now exists between Plaintiffs and Defendants as to whether the March 16, 2015 vote for Dr. Lally as At-Large Director was valid under USAS's Bylaws.

61. A declaratory judgment by this Court will remove uncertainty and terminate the controversy giving rise to this proceeding.

PRAYER

WHEREFORE, the Plaintiffs pray for judgment in their favor and against Defendants as follows:

A. For declaratory judgment that the vote on March 1, 2014 unanimously nominating Mr. Anderson for Vice President of the ISSF properly waived Mr. Anderson's term limit as a director of USAS;

B. For declaratory judgment that Mr. Anderson's participation in the March 16, 2015 election of At-Large Directors did not invalidate those election results, because Mr. Anderson was a director at that time, under USAS's Bylaws;

C. For declaratory judgment that the Dr. Lally was entitled to vote for himself in the March 16, 2015 election, and that the vote for his position was therefore valid, under USAS's Bylaws;

D. For declaratory judgment that Dr. Lally and Mr. Anderson are properly serving as USAS directors at this time;

E. For an award of Plaintiffs' reasonable costs and expenses incurred in connection with this lawsuit, including reasonable attorney's fees if allowed by law; and

F. For such other and further relief as the Court deems proper, just and permitted by law.

Dated this 4th day of September, 2015.

/s/ Steve B. Smith

Steven B. Smith

Brent E. Rychener

Suzanne A. Crespo

ATTORNEYS FOR PLAINTIFFS

Plaintiffs' Address:

1 Olympic Plaza

Colorado Springs, Colorado 80909-5570

VERIFICATION

STATE OF Colorado)
) ss.
COUNTY OF El Paso)

Robert Mitchell, being duly sworn, deposes and states that he is a Plaintiff in the above-captioned action and that he has read the foregoing VERIFIED COMPLAINT, and that the information contained therein is true and accurate to the best of his knowledge, information and belief.


Name: Robert Mitchell

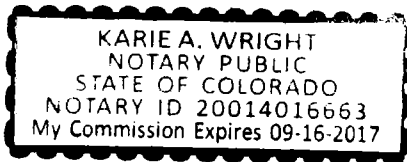
Subscribed and sworn to before me by Robert^{mitchell}, on the 31st day of August, 2015.

WITNESS MY HAND AND OFFICIAL SEAL.

My Commission Expires: 9-16, 2017

Dated this 31st day of August, 2015.


NOTARY PUBLIC



VERIFICATION

STATE OF California)
) ss.
COUNTY OF San Bernardino)

James Lally, being duly sworn, deposes and states that he is a Plaintiff in the above-captioned action and that he has read the foregoing VERIFIED COMPLAINT, and that the information contained therein is true and accurate to the best of his knowledge, information and belief.

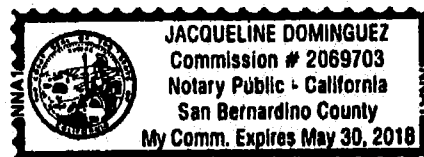
[Signature]
Name: James Lally

Subscribed and sworn to before me by James Lally on the 20 day of August, 2015.

WITNESS MY HAND AND OFFICIAL SEAL.

My Commission Expires: May 30, 2018

Dated this 20 day of August, 2015.

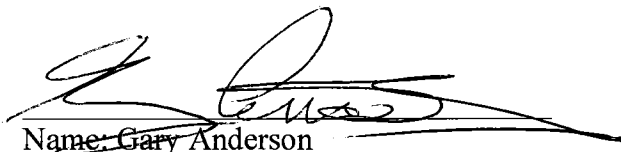


[Signature]
NOTARY PUBLIC

VERIFICATION

STATE OF Germany)
) ss.
COUNTY OF Bavaria)

Gary Anderson, being duly sworn, deposes and states that he is a Plaintiff in the above-captioned action and that he has read the foregoing VERIFIED COMPLAINT, and that the information contained therein is true and accurate to the best of his knowledge, information and belief.

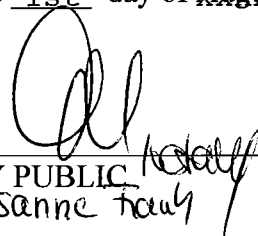

Name: Gary Anderson

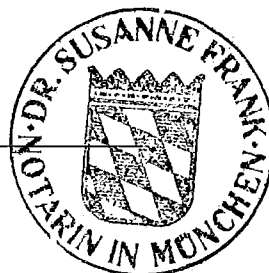
Subscribed and sworn to before me by Dr. S. Frank on the 1st day of ~~August~~ ^{September}, 2015.

WITNESS MY HAND AND OFFICIAL SEAL.

My Commission Expires: 31/08/, 2038

Dated this 1st day of ~~August~~ ^{September}, 2015.


NOTARY PUBLIC
Dr. Susanne Frank

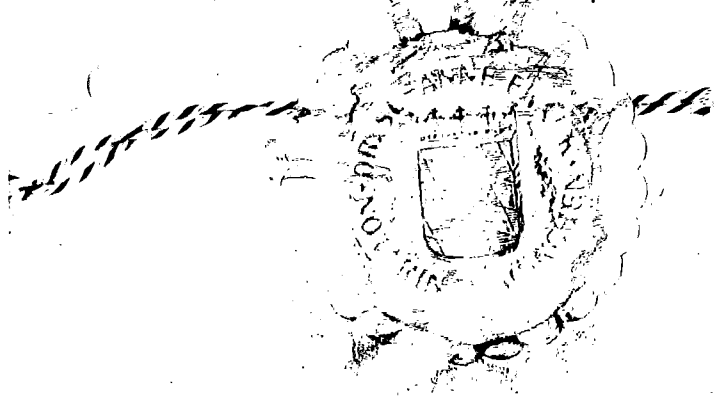


Deed Roll No. 2280 / 2015 F

I, the undersigned notary, herewith certify the foregoing signature having been personally executed before me by

Mr. Gary Anderson
born on October 8th, 1939,
who told me to be married with the statutory property regime,
resident Oak Harbor, Ohio 43449 in 9691 West Moonlight, United States of
America,
identified by his valid american passport.

Munich (Germany), September 1st, 2015



A handwritten signature consisting of several overlapping loops, appearing to be the initials "S.F." or similar.

Dr. Susanne Frank,
Notary Public in Munich/Germany