

**UNITED STATES OLYMPIC COMMITTEE
BLUE RIBBON PANEL**

MIKE GREER, ROBERT VIGORITO,)	
KAREN BUXTON, JOHN DUKE,)	
JACK WEISS AND RAY PLOTECIA,)	
)	
Grievants,)	
)	
against)	DECISION
)	
USA TRIATHLON BOARD OF DIRECTORS,)	May 17, 2004
VALERIE GATTIS, JIM GIRAND and)	
DIANE TRAVIS,)	
)	
Respondents)	

I. INTRODUCTION.

This dispute involves the 2003 election conducted by USA Triathlon (“USAT”) to fill four director positions to USAT’s Board of Directors (the “Board”).

The Grievants are Mike Greer, Robert Vigorito, Karen Buxton, John Duke, Jack Weiss and Ray Plotecia. Mr. Greer, Mr. Vigorito, Ms. Buxton and Mr. Duke were unsuccessful candidates for the election. Mr. Weiss was a successful candidate for the election. Mr. Plotecia is a current sitting member of USAT’s Board, elected in USAT’s 2002 election.

The Respondents are USAT, Valerie Gattis, Jim Girand and Diane Travis. Ms. Gattis, Mr. Girand and Ms. Travis were successful candidates for the election.

All parties to the dispute were ably represented by counsel.

This Panel was convened at the request of the parties to the dispute.

II. BACKGROUND.

USAT is a California non-profit corporation. It is recognized by the United States Olympic Committee (“USOC”) as the National Governing Body (“NGB”) for Triathlon in the United States. USAT also is an Olympic Sport Organization member of the USOC. USAT has approximately 47,000 members, each of whom is entitled to vote in the election for USAT’s Board.

USAT has eleven directors who sit on its Board. Two directors are elected “at large.” Additionally, a total of six directors represent USAT’s three geographic regions (the Eastern Region, the Central Region and the Western Region). Each region elects two directors. Finally three directors are elected by athletes and serve as athlete directors on the Board.

The 2003 Board consisted of the following persons. Valerie Gattis and Ray Plotecia served as “at-large” representatives. Additionally, Ms. Gattis served as USAT President. Diane Travis and Fred Sommer served as Eastern Region representatives. Additionally, Ms. Travis served as USAT Treasurer. Jack Weiss and Brad Davison served as Central Region representatives. James Girand and Tim Becker served as Western Region representatives. Additionally, Mr. Girand served as USAT Vice President. Kevin Carter, Eric Bean and Susie Gallucci served as athlete representatives.

Directors serve two-year terms. Thus, a director who is elected in 2003 would serve for the 2004 through 2005 calendar year term. Directors are eligible for election to two additional two-year terms. Of the directors sitting on the 2003 Board, Ms. Gattis, Mr. Girand, Ms. Travis and Ms. Buxton were running for election in 2003, for the 2004 through 2005 Board term.

Because USAT's Board has staggered terms, there is an election every year. Thus, one director from the "at large" category and one director from each geographic region are up for election each year. Because there are three athlete directors, two athlete directors are up for election in odd numbered years and one athlete director is up for election in even numbered years.

USAT's election procedures are set forth in Article VII, Section 4 of USAT's Bylaws. Those procedures state that the Board shall be directly elected by members of USAT by written ballot, which shall be mailed to the membership no later than October 1 of each year. Additionally, USAT's Board meets on an annual basis to discuss and set forth rules under which the election will proceed. These rules are called "Rules of Engagement."

On June 27-28, 2003, the Board considered the rules under which the 2003 election would be held. All Board members engaged in this discussion. However, when the vote on the election rules was taken, the four Board members who were running for reelection, Ms. Gattis, Mr. Girand, Ms. Travis and Ms. Buxton, refrained from voting.

Subsequently, when the minutes of the June 27-28 meeting, which set forth the election rules, were circulated Ms. Gattis responded by sending an email, dated July 15, 2003, to the Board. At issue was whether the rules were accurately reflected in the minutes. In her email, Ms. Gattis asked the Board members to clarify two areas of ambiguity. One of those areas involved whether or not candidates could collect ballots and the other area involved whether the ballot should be placed on USAT's website.

On July 17, 2003, David Backer, Co-Chair of USAT's Legal Committee, rendered a written opinion on the issues of distribution and collection of ballots by candidates. Mr. Backer concluded that in order to preserve the integrity of the election, only USAT should distribute and collect ballots.

On July 18, 2003 Ms. Gattis again sent an email to the Board. In that email she reported that based on the replies, which she received from the Board members, candidates would be allowed to collect ballots. She also indicated that the four Board candidates running for reelection refrained from voting. Ms. Gattis also attached a copy of Mr. Backer's opinion to the email and asked the Board members if they wished to revisit the ballot distribution and collection issue. She gave the Board members until 6:00 pm on July 18 to respond, otherwise she indicated the process of allowing for candidates to distribute and collect ballots would stand. Two members of the Board responded prior to the 6:00 pm deadline that they would like to revisit the issue. However, no Board meeting was called nor was there further action by the Board.

On August 5, 2003 Mr. Plotecia sent an email to the candidates that the ballot had been posted on USAT's website. On August 19, 2003 USAT mailed its publication, the Triathlon Times, to its members, containing the election ballot and candidate platforms.

During the election Ms. Gattis, Mr. Girand and Ms. Travis handed out ballots to voters, collected those ballots, reviewed the ballots for irregularities and mailed those ballots to the vote tabulator. The three candidates also maintained vote tallies from the ballots that they collected. Other candidates may also have handed out, reviewed and mailed in ballots and maintained vote tallies. There is no evidence that Ms. Gattis, Mr. Girand or Ms. Travis, or any other candidate, changed any ballot, discarded any ballot or in any other way tampered with the election results.

The election took place and USAT announced the results of the election on November 7, 2003 on its website. In the election, Valerie Gattis defeated Mike Greer and Karen Buxton for the “at large” seat. Diane Travis defeated Robert Vigorito and Tom Ziebart for the Eastern Region seat. Jack Weiss defeated Lew Kidder and Bill Burke for the Central Region seat. Jim Girand defeated John Duke for the Western Region seat.

On December 5, 2003 Mr. Greer, Ms. Buxton, Mr. Vigorito and Mr. Duke filed a formal Challenge with USAT contesting the election. The Board referred the Challenge to Board Counsel Jonathan Grinder. After reviewing the Challenge, Mr. Grinder on December 28, 2003 rendered a written opinion concluding that the election was improperly conducted as proper procedures were not used to change, clarify or modify the June 27-28 Board meeting. Based on that finding, Mr. Grinder also concluded that the election should have been conducted under the parameters as originally set forth in the June 27-28 Board minutes. Mr. Grinder did not delve into the other areas of impropriety alleged by the challengers. Mr. Grinder suggested two resolutions. One was to hold new elections. The other was to have a three person panel hear the challenge, make a decision on the propriety of the election and issue an appropriate decree or remedy.

On January 8, 2004 the newly seated Board met via teleconference to consider the challenge and issues related to the propriety of the 2003 election. Directors whose terms ended on December 31, 2003 were allowed to speak, but did not vote. Ms. Gattis, Mr. Girand and Mr. Travis recused themselves from the meeting. The Board voted to recuse Mr. Weiss. After

considering the Challenge and hearing from Mr. Grinder, the Board voted five to two that the 2003 election would stand.

On January 28, 2004 Grievants filed this Grievance with USAT. Also, on February 5, 2004 Grievants filed a complaint in Colorado District Court seeking to overturn the 2003 election. The Court issued an *ex parte* temporary restraining order preventing USAT's Board from meeting or taking any action. On February 16, 2004 the parties entered into an agreement, referred to as a Term Sheet, requesting that this Panel hear the Grievance and determine the propriety of the election. The Term Sheet is attached to this Decision as Attachment A.

The Term Sheet provides that the Panel "shall be empowered to review, resolve and otherwise act on all issues raised" in the dispute. Further, the Panel "shall be empowered to issue any findings and/or decisions and may impose any remedies, penalties and/or sanctions on any of the parties" as the Panel "deems appropriate in its sole discretion." However, the Panel "shall not impose any monetary penalty or sanction, and shall not require any party to pay another party's attorney fees or costs." Further, the parties agreed "to be bound by all findings and decisions" of the Panel "and to accept any remedies, penalties or sanctions imposed" by the Panel. Additionally, the Term Sheet directed that the Panel's decision and any remedy shall not be confidential.

III. THE DISPUTE.

This dispute involves the 2003 election of directors to USAT's Board from the three regions and from the "at large" category, for a term of office for the 2004 through 2005 calendar years. It does not involve the elections of the two athlete directors.

The crux of the dispute centers around the election rules that were followed for the 2003 election to the Board. Stated simply, at issue is whether or not certain rules were proper that allowed candidates: a) to distribute ballots to members, b) to gather ballots from members after the members had voted, and c) to submit completed ballots to the accounting firm that tabulated the election results.

Grievants assert that such rules were never properly adopted by USAT's Board, and so the election should not stand. Grievants further assert that even if such rules were validly adopted by the Board, those rules on their face violate all fundamental sense of fairness and propriety and the election should be thrown out. Finally, Grievants assert that because of the flawed rules, certain candidates may have engaged in questionable election practices, which would require that the election be overturned.

USAT and Respondents Gattis, Girand and Travis provide similar responses. They reply that the 2003 elections were conducted in accordance with USAT's bylaws and in compliance with California law, that the rules were properly adopted by USAT's Board prior to the election, that the rules were no different than what had been used in past elections, that all candidates were notified of and subject to the same rules, that no candidate filed a formal protest of the rules prior to the election and that the Board affirmed the election results after considering the merits of Complainants' Challenge. Additionally, Respondents Gattis, Girand and Travis dispute Complainants' assertion that any questionable election practice was committed by any candidate. Further, they contend that holding new elections would create uncertainty among USAT's members and sponsors and harm the future prospects of USAT.

The Panel considered the Grievance filed by the Grievants, the Responses to the Grievance filed by USAT and Ms. Gattis, Mr. Girand and Ms. Travis, the Hearing Briefs filed by each of the parties and the witness affidavits filed by each of the parties. Additionally, the Panel heard oral testimony, cross examination and argument presented by each of the parties. Further, the Panel considered certain additional material submitted by the parties after the close of the hearing.

IV. DECISION.

After considering all of the evidence and argument presented by the parties, the Panel concludes that the 2003 election was flawed and directs that a new election be held as soon as is practicable. The reasons for the Panels' decision are as follows.

Nothing is more important, or sacred, than that an election be conducted under rules that are beyond reproach and which do not give rise to the perception of impropriety or cause any doubt as to the fairness of the election. The rules under which USAT's Board election was conducted were ill conceived, contrary to normal election practices and allowed for improper election practices by candidates.

The first issue of contention, as raised by the parties, is whether the Board approved or did not approve the election rules. However, the Panel declines to engage in a lengthy discussion about or to make a finding as to this issue. Under the Panel's analysis, even if the rules were approved, they were so adverse to proper election practices that the election was tainted and cannot stand.

The second issue is the rules themselves. As stated previously, the panel finds that these rules were fatally flawed.

Rules that allow candidates to distribute ballots to voters give rise to the possibility of improper methods of electioneering. Allowing candidates to collect the ballots once marked only compounds the impropriety. An individual who votes in an election should be allowed the opportunity to do so freely, at a time when it is convenient for the voter and when the voter has the time and opportunity to consider the issues and candidates presented. Handing out a ballot by the candidate or his or her agent, waiting for the voter to mark the ballot and then collecting the ballot subjects the voter, at the very least, to improper influence and, at the most, to coercion. A voter should be free to vote for the candidate of his or her choice, with confidence that the he or she can cast his or her ballot anonymously. The voter should not feel pressured to vote for the candidate handing out the ballot nor should there be the actual or perceived threat of retribution if the voter casts his or her vote for a candidate other than the one who is handing out the ballot. There are valid and compelling reasons why elections are conducted so that votes can be cast anonymously and why candidates and their agents are not allowed within a certain distance of the voting booth. It is to ensure fairness in the election process. The process as conducted by USAT presents a picture of an election where the candidate or his or her agent stands over the voting box to insure the predetermined result. Even if such was not the case in USAT's election, the perception of impropriety has tainted the election result.

Further, rules that allow candidates and their agents to collect ballots, look at the ballots to ensure that they are marked properly and then submit the ballots to the vote counter is an open invitation to tampering and fraud. Candidates have no place in this aspect of the election. Those

activities must be conducted by an independent nonpartisan person who has no stake in the election. Elections must be run under the most stringent safeguards to ensure fairness and confidence in the election results.

Respondents argue that USAT's election rules should be allowed because they increase voter turnout. The Panel finds this argument without merit. If voter turnout is a concern to USAT, then it needs to find a method to engage its membership other than having candidates hand out and collect ballots.

The Panel is equally unimpressed with the arguments that these rules were followed in the past and that all candidates, being subject to the same rules, could have distributed, collected and submitted ballots. Merely because USAT used questionable election practices in the past does not legitimize their use in this election. The Panel finds equally unappealing the argument that all candidates could have engaged in such practices. Candidates must not be forced to choose between engaging in tainted election practices or risk losing the election.

Also, Respondents contend that the Grievants should have filed a formal protest of the rules prior to the election. Even if such action would have been preferable, it does not preclude the Grievants from being heard now. Furthermore, such argument ignores the fact that the election rules were squarely before USAT's Board prior to the election, concerns were expressed about those rules by Grievants and the Board failed or refused to act. USAT's Board discussed the rules and their shortcomings at the June 27-28 meeting. The issue was brought before the Board again when Ms. Gattis raised the issue of the accuracy of the Board minutes. Mr. Backer, the Co-Chair of USAT's Legal Committee issued an opinion on July 17 that emphatically stated such rules would not preserve the integrity of the election. Even after the election, when Mr.

Greer, Ms. Buxton, Mr. Vigorito and Mr. Duke filed a formal Challenge with the Board, the Board determined to stand by the rules and confirm the election. This was even in the face of the December 28 opinion of Mr. Grinder, Board Counsel, that the election was improperly conducted.

Further, contrary to Respondent's position that overturning the election would create uncertainty among USAT's members and sponsors, the Panel believes that the exact opposite is true. The electorate and those persons who provide financial resources to USAT must have faith that USAT, in its elections and in its governance, is run in a managerially sound and ethical manner. USAT, as the USOC recognized National Governing Body for Triathlon, holds a special trust in sport in the United States. That trust must not be tainted.

The third issue the Panel wishes to discuss is the role USAT's Board played in this dispute. The Panel holds USAT's Board accountable for the election rules that were used in the 2003 election. The Panel also holds the Board accountable for not heeding the advice of Mr. Backer, Co-Chair of the Legal Committee and Mr. Grinder, Board Counsel. If the Board had listened to Mr. Backer, candidates would not have been allowed to distribute, gather and submit ballots. If the Board had listened to Mr. Grinder, the Board would have either conducted a new election or submitted the Challenge filed by Mr. Greer, Ms. Buxton, Mr. Vigorito and Mr. Duke to a panel for review. It is incumbent upon USAT, as a National Governing Body, as is required by Section 220522(a)(13) of the Ted Stevens Olympic and Amateur Sports Act, to provide for the prompt and equitable resolution of grievances of its members. Rather, than submit the election dispute to an independent hearing panel, the Board instead determined to uphold the

election. To be heard, Grievants were required to go to Colorado District Court. Only then did the Board finally agree to having this Panel hear Grievants' complaint.

Further, the Panel questions USAT's election process that allows, or possibly requires, USAT's Board to promulgate election rules prior to each election. First, election rules should be well defined and not open to change every election. There is no reason why a fair election process cannot be formulated and followed year after year. Having the Board create new election rules for each election is fraught with problems. Second, having the Board issue new rules, when sitting Board members may be running for reelection under those rules, creates an inherent conflict. As was the case in the 2003 election, sitting Board members involved themselves in the discussions concerning the rules. Even though they may not have cast formal votes, they were not idle bystanders. As sitting Board members, they were in a position to influence the actions taken on the rules. Other candidates were not in such a position or even given an opportunity to comment on the rules. Any situation that creates a perception that insiders are fostering election rules for their own benefit creates an atmosphere of distrust and a feeling of disenfranchisement.

Finally, the Panel turns to the issue concerning the activities of those Respondents who were also candidates for election. The Panel did not hear any evidence that the Respondents committed fraud or that they changed any ballot, discarded any ballot or in any other way tampered with the election results. They proceeded under the rules as they were published by USAT, ill conceived as they were. However, the Panel questions the judgment of those individuals, as well as their motives, in advocating for and supporting USAT's election rules and then in engaging in practices under those rules that were perceived as improper and as

casting doubt on the credibility of the election. Their actions, at times, were certainly not of a caliber one would expect of candidates for Director positions on a National Governing Body. The Panel questions whether those candidates let their own personal aspirations override good judgment. Certainly they should have understood that their actions would raise the specter of impropriety and cast doubt on the election process, especially since they were sitting Board members.

V. CONCLUSION AND ORDER.

The election rules adopted by USAT cast doubt on the fairness and integrity of the 2003 Board election. The election is flawed and is overturned. Therefore, the election of Ms. Gattis as “at-large” delegate, of Ms. Travis as Eastern Region delegate, Mr. Weiss as Central Region delegate and Mr. Girand as Western Region delegate are overturned. This decision does not affect the 2003 athlete election to the Board. That election was not challenged and stands.

USAT shall hold a new election as soon as is practicable. In doing so, USAT should follow these general election guidelines. The election should be run pursuant to rules that are above reproach. Voters should be sent ballots, allowed a reasonable amount of time to vote, and should submit completed ballots directly to the vote tabulator. Candidates should play no role in this process. USAT should ensure that only those who are qualified voting members of USAT are able to vote. Except for the voter himself or herself, no person should know for whom the voter cast his or her ballot. Those who administer the election and who count the votes should be independent and impartial to the election. If there is any question as to the propriety of an election rule, USAT should pursue an approach that insures impartiality and process integrity.

As to the election specifics, the following procedures shall apply to the 2003 election. In those instances where these procedures differ from the procedures stated in USAT's Bylaws, these procedures shall take precedence. Any candidate who ran in the 2003 Board election, as well as any new candidate who wants to enter the race, is free to run in the new election. In order for the candidate to have his or her name placed on the ballot, the candidate must submit by May 28, 2004 a petition to the Nominating Committee signed by 30 USAT members supporting that candidate's nomination. Contrary to Article VII, Section 4(f), there shall be no limitation on the number of candidates who can run for a designated Board seat. Further, no slate of candidates shall be proposed by the Nominating Committee nor shall the Nominating Committee recommend any candidate for election. The Nominating Committee shall prepare a written ballot setting forth the specific seat for which the candidate is running. To assist the USAT membership in making an informed decision, candidate information (a photograph, candidate biographical material and information setting forth the candidate's views) shall be distributed with the ballot. Each candidate shall submit such material to the Nominating Committee by June 4, 2004 for inclusion with the ballot. The Nominating Committee shall determine the length of such material allowed, as well as prepare such material for distribution with the ballot.

The Nominating Committee shall mail written ballots, together with the candidate information, to all USAT members by June 14, 2004. The ballots may be mailed with the USAT magazine, if the Nominating Committee feels that is appropriate. The ballots shall be coded to ensure that only ballots sent out by USAT may be used for voting. Further, the ballot process shall ensure that only members of USAT may vote and that only one vote can be cast by each member. To ease tabulation, the ballots may be color coded with a different color for each seat

contested. The written ballot and candidate information shall also be placed on USAT's website. These materials may be downloaded and used by the candidates in their campaign for election. Downloaded ballots may be used for informational purposes only and may not be used for voting.

For the ballot to be counted, the voter must personally mail or send it by delivery service with a postmark or send date of June 28, 2004, or physically return it by June 28, 2004 to the vote tabulator. Only original ballots shall be counted. Photocopied and faxed ballots shall not be allowed. All ballots shall be directly submitted to the vote tabulator to be determined by the Nominating Committee. The vote tabulator shall be independent and impartial, and have no stake in the election.

The election results shall be announced as soon as possible, but in no event shall the announcement be later than July 7, 2004. The election results shall be placed on USAT's website. The new Board shall be seated by July 12, 2004.

The Panel further directs that within ten days of being seated, the new Board shall appoint a Task Force of at least three individuals to review USAT's election process. Any such Task Force shall have at least 20 percent athlete representation. USAT shall post the names of the Task Force on USAT's website. The Task Force shall review USAT's election rules and procedures and make a report and recommendation to USAT's Board and membership as to how those rules and procedures can be improved. The report and recommendation should be concluded by September 1, 2004. The Task Force should consider how to best eliminate the current USAT practice of having the Board promulgate new election rules prior to each election. The report and recommendations of the Task Force shall be posted on USAT's website.

If new election rules and procedures are not in place in time for the fall 2004 election, then that election shall be conducted pursuant to the same rules and procedures set forth by the Panel in this Decision. Except that the Nominating Committee shall determine new dates appropriate for the election process.

Further, in conducting its review the Panel came to the conclusion that USAT may be well served by reviewing its Bylaws and its method of operation in areas other than just its election process. It appears to the Panel that there is a deep rift among USAT members about how USAT should be run. Also, it appears to the Panel that in the past USAT's Board may have inserted itself into the day-to-day management of USAT, rather than limiting itself to setting policy and direction, and leaving the implementation of the policy and management of the organization to the Chief Executive Officer and staff. Accordingly, the Panel suggests that USAT conduct a review of its Bylaws and its method of operation in areas other than just its election process.

The Term Sheet states that the Panel shall remain in effect until such time as the dispute is resolved. The Panel views that the dispute remains unresolved and the Term Sheet shall remain in effect until such time as a new election occurs and a new Board is seated and empowered to act.

Any action that requires Board approval prior to the new Board being seated shall be dealt with pursuant to Section 6(C) of the Term Sheet.

This Decision shall be posted on USAT's website by May 18, 2004. Further, USAT shall send out a group email to all of its members by May 18, 2004 informing them of this Decision. The email shall also inform USAT's members that in order for a candidate to have his or her

Panel Decision
USA Triathlon 2003 Election Dispute
May 17, 2004
Page 17 of 17

name placed on the ballot, the candidate must submit by May 28, 2004 a petition to the Nominating Committee signed by 30 USAT members supporting that candidate's nomination. Further, the email should have a direct link to this Decision as posted on USAT's website.

A handwritten signature in black ink that reads "Thurgood Marshall, Jr." with a stylized, cursive script.

Thurgood Marshall, Jr., Chair

Mary McCagg, Panel Member
Tom Satrom, Panel Member
Barbara Smith, Panel Member
Glenn Wong, Panel Member