

**IN THE JUDICIAL COMMITTEE
OF THE
LIBERTARIAN NATIONAL COMMITTEE, INC.**

WES WAGNER, et. al.
Petitioner

v.

MARK HINKLE, in his official capacity as CHAIRMAN OF THE LIBERTARIAN NATIONAL
COMMITTEE, INC. and CHAIRMAN, EXECUTIVE COMMITTEE, et al.

Respondent

Appeal for relief from the Judicial Committee pursuant to Articles 6.6 and
9.2(a) of the By-Laws of the Libertarian National Committee, Inc.

**BRIEF FOR BRAD PLOEGER
AS AMICUS CURIAE IN SUPPORT OF NEITHER PARTY**

BRAD PLOEGER

Alternate, Region 1, Libertarian National Committee, Inc.
Representative, District 3, Libertarian Party of Georgia, Inc.
Secretary, Libertarian Party of Atlanta, Inc.

TABLE OF AUTHORITIES

Party Rules

By-Law 6.2

By-Law 6.3

By-Law 6.4

By-Law 6.5

By-Law 6.6

By-Law 8.12

By-Law 11.3(b)

Policy Manual Section 1.02.1

Judicial Committee Rules of Appellate Procedure Number 2

Statutes¹

Oregon Revised Statute 65.077

Oregon Revised Statute 65.084

Oregon Revised Statute 248.004

Miscellaneous

Black's Law Dictionary (7th ed.)

¹ The full text of Oregon Revised Statutes may be accessed online at <http://www.leg.state.or.us/ors/>

INTEREST OF BRAD PLOEGER

Brad Ploeger submits this brief as *amicus curiae* pursuant to Judicial Committee Rules of Appellate Procedure Number 2 as a prospective respondent due to his position on the Libertarian National Committee. Ploeger also asserts that as a Libertarian Party of Georgia, Inc. Executive Committee he may provide the Judicial Committee a unique perspective on the actual interaction between the Libertarian National Committee and an affiliate party.

QUESTIONS PRESENTED

1. Does the Libertarian National Committee have the ability to determine the legally recognized leadership of an affiliate party.
2. To what extent does the Libertarian National Committee have the ability to intervene in the affairs of an affiliate party.
3. Can a public policy resolution of the Executive Committee be adopted without prior notice by a less than a unanimous vote.
4. Did the Libertarian National Committee violate the due process of Petitioner.

ARGUMENT

1. Libertarian National Committee does not have the ability to determine the legally recognized leadership of an affiliate party.

The Libertarian National Committee lacks the ability to determine the legally recognized leadership of an affiliate party. The Libertarian National Committee, Inc. (hereinafter “LNC”) under By-Law 6.2 recognizes a legal entity “in each state, territory and the District of Columbia (hereinafter, state)” as the duly recognized affiliate of the Libertarian Party. By-Law 6.3 further limits recognition by the LNC to no more than one affiliate per state. Because the LNC is required to recognize a “qualifying organization” pursuant to By-Law 6.2 the Judicial Committee must look to governing state law, in this case, Oregon Revised Statute (ORS) 248.004, to wit:

“248.004 Powers of political parties; liability of political parties and of officers, employees and members of political parties.

(1) A minor political party or a major political party shall have all the powers granted to a nonprofit corporation under ORS 65.077.

(2) A major or minor political party shall be treated for purposes of contractual, tort or other liability as a nonprofit corporation.”

Due to this legal requirement any qualifying entity from the State of Oregon must be recognized as a nonprofit corporation pursuant to Oregon Law and is provided the following powers by ORS 65.077:

“65.077 General powers. Unless its articles of incorporation provide otherwise, every corporation has perpetual duration and succession in its corporate name and has

the same powers as an individual to do all things necessary or convenient to carry out its affairs, including, without limitation, power to:

- (1) Sue and be sued, complain and defend in its corporate name.*
- (2) Have a corporate seal, which may be altered at will, and to use it, or a facsimile of it, by impressing or affixing or reproducing it in any other manner.*
- (3) Make and amend bylaws not inconsistent with its articles of incorporation or with the laws of this state, for regulating and managing the affairs of the corporation.*
- (4) Purchase, take by gift, devise or bequest, receive, lease or otherwise acquire, and own, hold, improve, use and otherwise deal with, real or personal property or any interest in property, wherever located.*
- (5) Sell, convey, mortgage, pledge, lease, exchange, transfer and otherwise dispose of all or any part of its property.*
- (6) Purchase, receive, subscribe for or otherwise acquire, own, hold, vote, use, sell, mortgage, lend, pledge or otherwise dispose of and deal in or with shares or other interests in or obligations of any other entity.*
- (7) Make contracts and guarantees, incur liabilities, borrow money, issue notes, bonds and other obligations, and secure any of its obligations by mortgage or pledge of any of its property, franchises or income.*
- (8) Lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment, except as limited by ORS 65.364.*
- (9) Be a promoter, partner, member, associate or manager of any partnership, joint venture, trust or other entity.*
- (10) Conduct its activities, locate offices and exercise the powers granted by this chapter within or without this state.*
- (11) Elect or appoint directors, officers, employees, and agents of the corporation, define their duties and fix their compensation, if any.*
- (12) Pay pensions and establish pension plans, pension trusts and other benefit and incentive plans for any or all of its current or former directors, officers, employees and agents.*
- (13) Unless otherwise provided in the articles of incorporation, make donations not inconsistent with law for the public welfare or for charitable, benevolent, religious, scientific or educational purposes and for other purposes that further the corporate interest.*
- (14) Impose dues, assessments, admission and transfer fees upon its members.*

(15) Establish conditions for admission of members, admit members and issue memberships.

(16) Carry on a business.

(17) Do any other act, not inconsistent with law, that furthers the activities and affairs of the corporation.

(18) Dissolve, merge or reorganize as provided in this chapter.”

However, the question before the Judicial Committee is the LNC’s power to recognize which claimant is the legitimate leadership of the Oregon affiliate. It would appear that at no point does Oregon Law provide for an affiliated national organization to determine the legally recognized officers of an Oregon nonprofit corporation absent further contractual agreement. Without further contractual agreement, Oregon provides for a process in resolving disputes concerning corporate authority in ORS 65.084, to wit:

“65.084 Challenge of corporate authority; remedy.

(1) Except as provided in subsection (2) of this section, the validity of corporate action may not be challenged on the ground that the corporation lacks or lacked power to act.

(2) A corporation’s power to act may be challenged:

(a) In a proceeding by a member or members, a director or the Attorney General against the corporation to enjoin the act;

(b) In a proceeding by the corporation, directly, derivatively or through a receiver, a trustee or other legal representative, including the Attorney General in the case of a public benefit corporation, against an incumbent or former director, officer, employee or agent of the corporation; or

(c) In a proceeding under ORS 65.664.

(3) In a proceeding under subsection (2)(a) of this section to enjoin an unauthorized corporate act, the court may enjoin or set aside the act, if equitable and if all affected persons are parties to the proceeding, and may award damages for loss other than anticipated profits suffered by the corporation or another party because of enjoining the unauthorized act”

While the LNC has a clear and compelling interest in resolving the Oregon leadership dispute the proper venue for resolution of the matter is a court of law within the State of Oregon under ORS 65.084(2)(a). Neither Oregon Law, the By-laws of the Libertarian Party of Oregon filed and accepted by the Oregon Secretary of State, nor the By-Laws provide LNC authority to resolve this dispute unilaterally. The Secretary of State of Oregon is the sole entity which can recognize the legitimate leadership of the affiliate party in Oregon. Until such time as the Oregon Secretary of State recognizes different leadership of the Libertarian Party of Oregon, the LNC is bound to recognize Petitioner as the leadership of the affiliate party until such time as:

- a. a valid vote of disaffiliation and the charting of a new state affiliate under the By-Laws; or,
- b. an order by a court of competent jurisdiction to the Secretary of State recognizing a different slate of officers of the Libertarian Party of Oregon.

2. Libertarian National Committee is severely restricted in its ability to intervene in the affairs of an affiliate party and the National Committee exceeded its jurisdiction in respect to Oregon.

By-Law 6.5 clearly states that " the autonomy of the affiliate and sub-affiliate parties shall not be abridged by the National Committee or any other committee of the Party, except as provided by these Bylaws." The Judicial Committee must first look to the word "autonomy" to full understand the meaning of the By-Law in question. Merriam-Webster defines autonomy as follows:

"Definition of AUTONOMY

1: the quality or state of being self-governing; especially : the right of self-government

2: self-directing freedom and especially moral independence

3: a self-governing state"²

As one can quickly deduce, the term autonomy is closely linked to the idea of self-government which Merriam-Webster defines as thus:

"Definition of SELF-GOVERNMENT

1: self-control, self-command

2: government under the control and direction of the inhabitants of a political unit rather than by an outside authority; broadly : control of one's own affairs"³

Essentially, By-Law 6.5 states that an affiliate party is free to conduct any action unless that action is specifically prohibited elsewhere in the By-Laws. A quick read of the By-Laws sets forth only two restrictions of affiliate autonomy:

By-Law 6.4: "No affiliate party shall endorse any candidate who is a member of another party for public office in any partisan election. No affiliate party shall take any action inconsistent with the Statement of Principles or these Bylaws."

By-Law 11.3(b): "Any federal or state law to the contrary notwithstanding, delegates to a Regular Convention shall be selected by a method adopted by each affiliate party; provided however, that only members of the Party as defined in these Bylaws, or

² Autonomy. (2011). In Merriam-Webster. Retrieved July 25, 2011, from <http://www.merriam-webster.com/dictionary/autonomy>

³ Self-Government. (2011). In Merriam-Webster. Retrieved July 25, 2011, from <http://www.merriam-webster.com/dictionary/self-government>

members of the affiliate party as defined in the constitution or bylaws of such affiliate party, shall be eligible to vote for the selection of delegates to a Regular Convention"

The LNC is further restricted in the remedies they may pursue after a breach by an affiliate party. By-Law 6.6 sets forth disaffiliation for cause as the sole remedy available. Such a disaffiliation requires a vote of three-fourths of the entire LNC for passage. In the matter before the Judicial Committee there appears to have been no such adverse disaffiliation vote towards Oregon. Due to this, Petitioner seems to have no standing to bring an appeal before the Judicial Committee.

3. The Executive Committee cannot adopt a public policy resolution unless it meets the minimum requirement for passage by the National Committee.

On July 18, 2011, the Executive Committee adopted three resolutions presented by the Vice Chair in regards to the Oregon Affiliate. These resolutions identified three findings of the Executive Committee:

"Based upon the available evidence, the Executive Committee of the Libertarian National Committee finds that the Bylaws of the Libertarian Party of Oregon (as amended March 14-15, 2009) are the Bylaws of the Libertarian Party of Oregon, and that these bylaws have been in effect since March 15, 2009."

*"Based upon the available evidence, the Executive Committee of the Libertarian National Committee recognizes as the officers of the Libertarian Party of Oregon those people elected by the State Committee during its meeting on May 21, 2011. They are:
Chair: Tim Reeves
Vice chair: Eric B. Saub
Secretary: Carla J. Pealer
Treasurer: Gregory Burnett"*

"The Executive Committee of the Libertarian National Committee urges the members of the Libertarian Party of Oregon to work together to resolve their disagreements."

As noted earlier in this brief the LNC is severely limited in the actions it may take towards an affiliate party. Because the Executive Committee did not attempt to disaffiliate the Oregon affiliate their resolution concerning their findings would be a public policy resolution of the Party. By-Law 8.12 sets forth the requirements required for passage of a public policy resolution as follows:

"The National Committee may adopt public policy resolutions by a ¾ vote with previous notice or by unanimous consent without previous notice."

To understand what resolutions would fall under this requirement the Judicial Committee must look to the definition. Black's Law Dictionary (7th ed.), defines public policy as follows:

"public policy-

1. Broadly, principles and standards regarded by the legislature or by the courts as being fundamental concern to the state and the whole of society. Courts sometimes use the term to justify their decisions, as when declaring a contract void because it is "contrary to public policy." -- Also termed policy of the law.

2. More narrowly, the principle that a person should not be allowed to do anything that would tend to injure the public at large."

Because the motions in question found that both the By-Laws recorded as official and the officers recognized by the Oregon Secretary of State are incorrect, the presumption arises that the motions were an attempt to influence the actions of a state constitutional officer and thus public policy in Oregon. In fact, when the LNC was notified of Mr. Wagner's reaction to the findings of the Executive Committee on July 20, 2011 Ms. Sink-Burris inquired via email to the entire LNC:

"Has Oregon election division and Secretary of state be notified of our decision?"

Rebecca"

It would appear the Executive Committee's findings were assumed by at least one member of the LNC to in fact be an attempt to influence the actions of the Oregon Secretary of State and thus would seem to qualify as a public policy resolution under By-Law 8.12.

To understand if the motions met the notice requirement the one must look to the LNC's Policy Manual. Policy Manual Section 1.02.1 sets forth the requirement for proper previous notice as:

"An LNC Member may satisfy by either one of two methods the requirement of giving previous notice of his or her intention to introduce an original main motion at the next session:

• announcing this intention at the previous session in the presence of a quorum, providing an accurate and complete statement of purport, such notice to be taken note of in the minutes; or

• transmitting this intention by an e-mail to the entire LNC at least 21 days prior to the session with the full text of the motion to be submitted

Motions dispensed through electronic mail ballots satisfy the requirement of giving previous notice."

A review of the minutes of the Executive Committee and emails to the entire LNC since June 26, 2011 do not appear show that any member had given previous notice of the intent to adopt a public policy resolution.

Upon review of the minutes of the Executive Committee meeting in question it appears Dr. Ruwart objected to the adoption of the first two findings. It could be argued that the resolution appears to have been in violation of By-Law 8.12. While these details provide a beneficial insight of the events which transpired to the Judicial Committee; they are nevertheless matters

that must be handled by the rules governing the LNC's conduct of business and are thus outside the scope of the matter before the Judicial Committee.

4. The Libertarian National Committee violated the due process rights of Petitioner.

On or about July 23, 2011 the National Chairman, directed the Party's General Counsel to issue a demand notice to Petitioner:

"Dear Mr. Wagner, Mr. Tabor, Mr. Knight and Mr. Vetanen:

I am general counsel to the Libertarian National Committee. This is a demand that you cease and desist from any actions or omissions that are inconsistent with (1) the determination of the Executive Committee of the Libertarian National Committee that the bylaws of the Libertarian Party of Oregon as amended March 14-15, 2009 are the bylaws of the Libertarian Party of Oregon and have been in effect since March 15, 2009 or (2) the determination of the Executive Committee that the officers of the Libertarian Party of Oregon are the individuals elected by the State Committee on May 21, 2011, namely, Tim Reeves, Chair; Eric B. Saub, Vice Chair; Carla J. Pealer, Secretary; and Gregory Burnett, Treasurer. As you were previously notified, the Executive Committee made these determinations on July 18, 2011.

Gary Sinawski"

This demand was given despite the fact that the Officers and Members of the LNC had been notified by the Chairman of the Judicial Committee of a pending appeal. The demand was an overt and obvious act meant to prejudice the case of the Petitioner and infringe their rights under the By-Laws.

Until the Judicial Committee makes a determination of the merits of the arguments presented by Petitioner both sides should be enjoined from taking any actions or omissions which could be construed to be an adverse action. It is deeply troubling that the National Chairman would so seemingly violate Petitioner's right of due process.

CONCLUSION

For the foregoing reasons, the Judicial Committee should dismiss the complaint due to lack of standing by Petitioner to bring this matter. The Judicial Committee is urged further to find that:

1. Until such a time as the Secretary of State of Oregon recognizes different leadership of the Libertarian Party of Oregon or a dissolution motion is adopted by the LNC pursuant to By-Law 6.6, Petitioner constitutes the legal leadership of the Libertarian Party of Oregon.
2. Find that the Executive Committee seems to have exceeded its authority and may have violated the rules which govern its business by adopting a public policy resolution in a manner inconsistent with the By-Laws.

Lastly, the Judicial Committee is strongly urged to amend the rules of appellate procedure to require that when a petition is pending both Petitioner and Respondent shall be enjoined from taking any action or omission which may be considered adverse to either party until a petition is adjudicated or otherwise disposed.

Respectfully submitted,

/s/ BRAD PLOEGER