

Information Supporting the Actions taken by the LNC's Executive Committee on July 18, 2011

Absent from the Appellant's filing was a timeline of the relevant events that have transpired. We have prepared a timeline to assist your consideration of this matter, as understanding the timeline is crucial to understanding the situation and our arguments.

TIMELINE

March 12, 2011

As of March 12, 2011 it was undisputed that:

- 1) There was one and only one Libertarian Party affiliate in Oregon;
- 2) Jeff Weston was the Chairperson of that affiliate;
- 3) Wes Wagner was the Vice Chairperson of that affiliate;
- 4) The bylaws of that affiliate were those last amended March 14-15 2009; and
- 5) The constitution of that affiliate was that last amended December 29, 2007.

(See Appendices E and F for the 2007 LPO Constitution and the 2009 LPO Bylaws.)

On this date the Libertarian Party of Oregon held its regular annual convention. (See Appendix G for minutes of this meeting. Note that we do not have access to any minutes produced by the then-LPO Secretary, so these minutes were later produced by Mr. Reeves' group based upon video of the event which is available online at <http://www.ustream.tv/recorded/13286925> .)

At the start of the meeting it was determined that no quorum was present. In the absence of a quorum the only legal actions are to recess, take actions to achieve a quorum, and adjourn.

Based on a motion made by Mr. Wagner, the assembled LPO members voted to adjourn to 11:00am on May 21, 2011, to continue the convention on that date.

Based on a motion made by Mr. Wagner, the assembled LPO members voted to set the place of the May 21 convention to be the same location unless that location wasn't available for that date, in which case members would be given notice of a new location.

During that meeting LPO member "David Long raised a parliamentary inquiry as to when the term of office of the officers would end if the motion were to be adopted. The Chairperson answered that if the motion were to pass, the term of office of the officers would end 'at the end of the convention in May'".

Following the adjournment to May 21, Jeff Weston resigned as Chairperson of the LPO. Article V.2.B of the 2009 LPO Bylaws states: "*In the event of a vacancy in the office of state chairperson, the state vice chairperson shall serve as State Chairperson until the close of the next annual convention.*"

By that rule, Wes Wagner (as Vice Chairperson) became Chairperson, to serve until the close of the next annual convention, which the convention delegates had just scheduled for May 21, 2011. The Oregon Secretary of State office, Elections Division, was notified of the change, and Mr. Wagner was added to their records as the Chairperson of the LPO.

March 31, 2011

As of March 31, 2011 it is undisputed that:

- 1) There was one and only one Libertarian Party affiliate in Oregon;
- 2) Wes Wagner was the Chairperson of that affiliate;
- 3) The bylaws of that affiliate were those last amended March 14-15 2009; and
- 4) The constitution of that affiliate was that last amended December 29, 2007.

Regarding amendment the 2009 LPO Bylaws in Article XVI.3 state *“These Bylaws may be amended by a two-thirds majority vote of all votes cast by registered delegates present at an LPO convention.”*

Regarding amendment the 2007 LPO Constitution states in Article VIII *“This Constitution may be amended by a two-thirds vote of all votes cast by registered delegates at an LPO convention, following compliance with the provisions of the Bylaws concerning such amendments.”*

These documents make no mention of any other procedure for their amendment.

The LPO State Committee met, chaired by Mr. Wagner, and voted to adopt a new constitution and bylaws for the LPO, with the new bylaws and constitution to be “ratified” by registered Libertarian voters in Oregon in the 2012 primary season. (See Appendix D for the minutes.) These alleged new bylaws and constitution have been provided to the Libertarian Party Judicial Committee as part of the Appellant’s filing.

Following this March 31 LPO State Committee meeting, Chairperson Wes Wagner contacted the Oregon Secretary of State’s office, Elections Division, and put the alleged new bylaws and new constitution on file asserting them to be the legitimately adopted governing rules for the LPO. (Note the receipt stamp on the materials submitted by the Appellant.)

May 21, 2011

On May 21, 2011, LPO members arrived at the place and time designated by vote of the March 12 convention. None of the LPO officers showed up at this part 2 of their convention - not even Chairperson Wes Wagner, who had made the motion to adjourn to that date, time, and location.

The Oregon members present selected a chairman pro tem and a secretary pro tem, and they proceeded without the officers. As best as they could determine in the absence of

the LPO Secretary, they did not have quorum to continue with the regular business of electing officers, so the convention instead adjourned sine die. (See Appendix H for the minutes of this meeting.)

Since the LPO officer terms expire at the end of their conventions, all the officer positions became vacant at that point. Specifically Wes Wagner ceased to be the LPO Chairperson at that point.

The remaining State Committee members (representatives appointed by the county affiliates) met immediately following adjournment of the convention, as required by their 2009 bylaws. (See Appendix I for the minutes of this meeting.) Their State Committee members are empowered to fill officer vacancies, so the State Committee selected new officers, namely:

Chairperson – Tim Reeves
Vice-Chairperson – Eric Saub
Secretary – Carla Pealer
Treasurer – Gregory Burnett

Following the May 21 end of the annual convention, the Reeves group submitted to the Oregon Secretary of State the proper paperwork to notify them of new officers of the LPO. When a functionary in the office received this documentation she noticed it was not submitted by the last chair listed in their records for the LPO, Wes Wagner, so she inquired with the head of the Elections Division as to what to do with it. He, not knowing the story, told her not to process the form identifying the new officers unless it was with the approval of the chair listed in their records.

Since that time, the Elections Division of the Oregon Secretary of State office has not made a decision based on the merits of the arguments presented by the two groups. Instead they have maintained that their office policy is that they need the permission of the outgoing chair to list new officers in their records. As Wes Wagner has not approved the new officers, the Secretary of State records remain unchanged.

In most cases this policy would work very well and serve to provide the Secretary of State's office with reasonable justification for why they updated their records as they did. However, it doesn't anticipate exceptional circumstances such as these. Even in situations where the outcome wasn't in dispute, it would allow a disgruntled former-chair to maintain his recognition with the Secretary of State's office for life by merely refusing to cooperate with the new officers.

Since the end of their annual convention on May 21, 2011, there have been two groups of individuals both claiming to be the officers of the Oregon affiliate – the Tim Reeves group appointed by the State Committee on May 21, and the Wes Wagner group.

The Reeves group citing the clear language of the LPO Bylaws in effect at the time of the aforementioned March 31, 2011 meeting, denies that the Wagner group had the authority

to amend the bylaws of the LPO on March 31, thus the Reeves group considers the 2009 bylaws to still be in effect, and the membership of the LPO to be as defined by the 2009 bylaws.

The Wagner group contends that the bylaws now in effect are the new ones adopted by the LPO State Committee on March 31, 2011, subject to a future ratification. They have publicly asserted that their having allegedly adopted new bylaws rendered as moot the vote of the delegates on March 12 to continue the convention to May 21, thus the May 21 proceedings were cancelled and invalid, and no new officers could be put in place as a result of the May 21 events.

The LNC at this point faced an untenable position, needing to be able to identify the officers of our Oregon affiliate, but with two groups each claiming to be the legitimate officers.

June 27, 2011

The State Committee of the group chaired by Tim Reeves held its regular monthly meeting, at which it adopted a resolution requesting that the LNC determine which group it would recognize. (See Appendix J for the minutes of this meeting.)

July 17-18

The LNC's Executive Committee met by teleconference and adopted motions recognizing the Tim Reeves group as being the properly elected officers of the Libertarian Party's affiliate in Oregon, and recognizing that the bylaws last amended in 2009 are still the current bylaws of that affiliate. (See Appendix A for the DRAFT minutes of this meeting.)

The decisions were not made lightly. Minutes from the LNC sessions in November 2010 and April 2011 reflect that discussions took place regarding developments in the Oregon affiliate.

Prior to the teleconference on this date, the LNC had received a substantial amount of written material on this subject from both groups over the course of several months. Thirteen members of the LNC specifically notified the LNC Chair that they thought it prudent for the LNC's Executive Committee to consider the questions immediately, and the Chair also agreed. Upon invitation by the LNC's Executive Committee, representatives from both Oregon groups participated in the teleconference to make their cases. After a subsequent Executive Session with the LNC's legal counsel, the LNC's Executive Committee decided it was necessary to proceed with the motions.

After this meeting, the Libertarian Party Secretary informed Mr. Wagner and Mr. Reeves by email of the text of the three motions adopted by the LNC's Executive Committee. (See Appendix B.)

Mr. Wagner replied by email to transmit the official response of his colleagues to the news of the motions adopted by the LNC's Executive Committee. This response consisted of a graphic image of a flaming middle finger with some additional commentary. (See Appendix C.)

END OF TIMELINE

The LNC's Executive Committee actions on July 18 merely specified whom it recognizes as the officers of our long-time Oregon affiliate (which first required we come to a conclusion as to which set of bylaws is in effect for them). We came to the conclusion that the Reeves officers appealing to us were elected by LPO members in accordance with the bylaws adopted by LPO members. Mr. Wagner was not re-elected and has not been the Chairperson of the Oregon affiliate since May 21.

The LNC, its officers, its employees, and Libertarian Party committees, in order to meet many requirements in the Libertarian Party Bylaws (see Appendix K for a partial listing), must know the identity of the officers of each affiliate and at times the rules by which the affiliate operates.

We believe that subject to the constraints of the Libertarian Party Bylaws, the Libertarian National Committee has (and has delegated to its Executive Committee) wide latitude to act on behalf of the Party. In particular, we believe that when members of an affiliate party (a) inform the LNC of a dispute about the identity of the officers of that party and (b) request that the LNC decide which people it will recognize as the legitimate officers according to the bylaws of that affiliate party, the LNC may legitimately decide whom to recognize as the officers. We also believe all decisions in such matters must be made in accordance with both the Libertarian Party Bylaws and the bylaws of that affiliate organization.

Furthermore, we believe there is a fundamental difference between the aforementioned decision process regarding the legitimate officers of an affiliate party and the process of disaffiliating an affiliate party described in Article 6.6 of the Libertarian Party Bylaws.

The authority of the National Committee is specified under Article 8.1 of the Libertarian Party Bylaws, which reads as follows:

“The National Committee shall have control and management of all the affairs, properties and funds of the Party consistent with these Bylaws. The Libertarian National Committee shall establish and oversee an organizational structure to implement the purposes of the Party as stated in Article 3. The National Committee shall adopt rules of procedure for the conduct of its meetings and the carrying out of its duties and responsibilities. The National Committee may delegate its authority in any manner it deems necessary.”

Much of this authority has been delegated under Section 1.01, Paragraph 3 of the Libertarian National Committee Policy Manual, which reads as follows:

“The Executive Committee shall exercise all powers of the LNC between LNC meetings except for the addition, deletion, or amendment of the LNC policy manual or amendment of the budget beyond the limits specified elsewhere in this Policy Manual. Notwithstanding, the LNC reserves the right to exercise its authority through electronic mail ballots.”

Does recognizing the legitimate officers of an affiliate violate that affiliate’s autonomy?

Article 6.5 of the Libertarian Party Bylaws reads as follows:

“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.”

We reiterate our earlier point that the Appellant may not procedurally get a foot in the door using the process in Libertarian Party Bylaws Article 6.6 which can be used only for the subject of disaffiliation, and then broaden the scope to include other subjects which can only be appealed following the very different process specified in Libertarian Party Bylaws Article 8.13.

However, since the material provided by the Appellant asserts that the LNC’s Executive Committee actions of July 18 abridged the autonomy of the Libertarian Party of Oregon we will address it to say that we disagree with that assertion.

When there are two or more groups of people claiming to be officers of a state affiliate, we believe it does not abridge the autonomy of that affiliate to recognize as officers those who have been elected in accordance with that affiliate’s bylaws, nor does it abridge that autonomy to decline to recognize those whose claim of legitimacy is based upon clear violations of that affiliate’s bylaws and/or the use of illegitimate state action.

The LNC’s Executive Committee has not adopted or amended bylaws for the Oregon affiliate. The LNC’s Executive Committee has not elected officers for the Oregon affiliate. Oregon members did both of those things. Rather, the July 18 actions of the LNC’s Executive Committee served to protect the autonomy of our Oregon affiliate by protecting the rights of the members of the Oregon affiliate to select their own bylaws, define their own membership, and select their own officers without a rogue board of directors interfering.

It should be noted that in at least two previous situations of which we are aware, the LNC made decisions as to the identity of officers of state affiliate organizations without objections (at least, no objections that we can find) that the decisions violated the autonomy of the affiliate organizations. The first situation (in 1995) involved a recall election regarding the officers of the Libertarian Party of Oregon. The second situation (in 2003) involved the removal from office of the Chair of the Libertarian Party of Virginia.

We mention these situations not to suggest they are equivalent to the situation currently under

consideration, nor to suggest such situations constitute precedents the Judicial Committee must respect. Rather, we mention them because they illustrate that previous LNCs have dealt with intra-affiliate disputes involving the identity of party officers, and that those situations were not viewed as being contrary to our bylaws.

What vote threshold is required for the July 18, 2011 actions of the LNC's Executive Committee?

In public discussion of this matter some Libertarian Party members have argued that in this situation, the determination of which set of officers the LNC should recognize should be "treated as" a matter of disaffiliation, and thus the LNC must resolve the matter by following the rule in Libertarian Party Bylaws Article 6.6 requiring a "vote of 3/4 of the entire National Committee".

It is a natural human tendency to argue for what one desires the rule to be, and so one must have the discipline and restraint to evaluate arguments only in the light of what the existing rule actually is. Indeed, we've seen a disconcerting pattern in government courts as judges legislate from the bench.

We have noted elsewhere in our response that Libertarian Party Bylaws Article 8.1 gives the LNC broad latitude in taking action on behalf of the Libertarian Party. Regarding issues with affiliates, the Libertarian Party Bylaws only mandate special conditions and/or rules for the LNC in two cases:

- 1) chartering new affiliates, Article 6.2
- 2) disaffiliating an existing affiliate, Article 6.6

There is no existing rule in Libertarian Party governing documents which requires that when two groups are each asserting claims to be recognized as the leadership of an existing affiliate, that the LNC must treat that situation as if it were a disaffiliation question. Without any other bylaw or special rule imposing a higher vote threshold, the rule from our parliamentary authority (RONR) is that new main motions merely require a majority vote of a body with authority to address the subject.

Were a new bylaw to be proposed to override RONR on this subject, one to require that a dispute as to the identity of officers in an existing affiliate should be treated as a disaffiliation, there are strong arguments to be made against the wisdom of such a rule.

One of the purposes of the Libertarian Party (listed in Article 3 of our bylaws) is to charter affiliates. It is so important to our mission that we have affiliates that the "3/4 of the entire National Committee" rule for disaffiliation gives strong protection to an existing affiliate. Party convention delegates do not want for the LNC to go from the condition of having an affiliate to the condition of having no affiliate without very good reasons supported by a strong super-majority of the LNC.

Were the LPO in a condition where its members had no recourse under their own rules for the abusive March 31 actions of its leadership, perhaps the LNC would find that such conditions are serious enough to warrant eliminating that existing affiliate. But LPO members did have recourse under their own rules, and they have followed those rules to rectify the problem. The affiliate can be preserved by merely convincing the Libertarian Party leadership and the Oregon Secretary of State's office to respect their legitimacy.

Requiring a $\frac{3}{4}$ disaffiliation vote to settle a dispute over the identity of affiliate officers would empower a group to gain the significant bylaws protection of an existing affiliate merely by asserting a competing claim regarding the officer positions, rather than following the formal procedures for becoming an affiliate. That would seem to be a violation of Libertarian Party Bylaws Article 6.2.

Perhaps the concern is that in some future hypothetical case, an LNC could by simple majority vote do just the opposite of what this current LNC has done in this real case. A future LNC could vote to recognize illegitimate officers of a new organization rather than the legitimate officers of the existing affiliate. (Such a decision could be appealed to the Judicial Committee, just like any decision of the LNC.) The proposed solution of requiring a super-majority to address this concern could potentially hamstring the current LNC from doing the right thing (protect the legitimate leadership from an illegitimate takeover), and that same solution would actually permit a super-minority on the LNC to do exactly what they fear.

An illegitimate competing claim to officer positions would only need to gain the support of a small minority of the LNC (enough to prevent a $\frac{3}{4}$ disaffiliation vote) in order to successfully hijack an existing affiliate. Surely the proponents of the "this should be treated as disaffiliation" argument don't intend to allow this possibility of a constructive disaffiliation and a constructive new affiliation with a $\frac{1}{4}$ super-minority of LNC support.

Note also that with two competing sets of claimants, it is possible that neither could achieve $\frac{3}{4}$ support from the LNC. Perhaps there might be a $\frac{2}{3}$ and $\frac{1}{3}$ split. Such a $\frac{3}{4}$ rule could result in a default acceptance of the status quo whether or not a majority of the LNC thought that was the right answer. But only in very rare occasions could an LNC fail to arrive at a majority decision with two competing groups of claimants.

In the summary document submitted with this one, we indicated problems with the logical extension of the Appellant's theory that the recognition of legitimate new officers is tantamount to a disaffiliation of the former officers. If one accepts that theory, then one should consider the implications of that theory when applied in the following scenario:

Suppose the LNC receives a petition from Mr. Reeves and his associates, in which (a) they claim they are the legitimate officers of the LPO, and (b) they request that the LNC vote to determine which set of officers it will recognize as legitimate. Suppose the LNC declines to address the issue and continues to treat the Appellant as the LPO and Mr. Wagner as its Chairperson. (Given some of Mr. Wagner's comments during the past several months, this is a course of action of which he presumably would have approved.)

Note that at no time in this supposed scenario would the LNC approve a motion specifically recognizing the Appellant's group as the LPO officers.

In this scenario, the LNC has effectively recognized one set of officers over another set without the disaffiliation vote the Appellant supposedly believes is necessary. Indeed, this effective recognition has occurred without any type of vote by the LNC. Thus, one may reasonably view the Appellant's theory as implying Mr. Reeves and associates would be entitled to appeal to the Judicial Committee that the LNC – through a decision to take no action at all, much less take a $\frac{3}{4}$ vote – had constructively disaffiliated the Libertarian Party of Oregon and affiliated with the Appellant's organization.

(Apparently the Appellant's theory allows the possibility that both scenarios (1-LNC action of voting to recognize a set of officers, and 2-LNC inaction of declining to vote to recognize a set of officers) constitute "disaffiliation" of the affiliate of which both groups claim to be the officers. We suggest a theory that allows such interesting results is not consonant with the LP Bylaws.)

Since no disaffiliation vote was approved in this scenario, and since the Appellant's theory apparently requires that a disaffiliation vote take place in order to determine a set of officers among competing sets, the LNC's "constructive disaffiliation" of the Reeves group would have to be regarded as null and void. What is the implication of that? Would the LNC then be required to regard the Reeves group as the legitimate set of officers until action is taken by the LNC?

One can raise many such serious questions about the implications of forcing a determination between competing sets of officers into the framework of the disaffiliation of affiliate parties.

Rationale Supporting the Determination that Tim Reeves is the LPO Chairperson

The key question regarding the identity of the legitimate officers of the Oregon affiliate is whether the LPO State Committee (with Wes Wagner as Chairperson) had the authority to amend the LPO Constitution and Bylaws on March 31, 2011. This is addressed in the next few sections.

What did the LPO Bylaws say about amendment?

It is not disputed by either the Appellant or the LNC that the LPO Bylaws on March 31, 2011 were those last amended in convention March 14-15, 2009. Regarding amendment of the bylaws, those 2009 LPO Bylaws state in Article XVI:

“SEC. 3. Two Thirds Majority Required. These Bylaws may be amended by a two-thirds majority vote of all votes cast by registered delegates present at an LPO convention,”

Nowhere in the LPO Bylaws did it authorize the State Committee to amend the bylaws. On March 31, 2011, the authority to amend the LPO Bylaws rested solely with registered delegates present at an LPO convention.

As Article XVII of those same bylaws states:

“SEC. 1. The rules contained in the current edition of Robert's Rules of Order Newly Revised shall govern the LPO in all cases to which they are applicable and in which they are not inconsistent with the LPO Constitution and these bylaws and any special rules of order the LPO may adopt.”

Besides the clear meaning of Article XVI Section 3, the restrictive nature of that bylaw is reinforced by a principle of interpretation given in Robert’s Rules of Order Newly Revised 10th Edition (RONR) page 570 lines 24 – 35, which state:

“4) If the bylaws authorize certain things specifically, other things of the same class are thereby prohibited. There is a presumption that nothing has been placed in the bylaws without some reason for it. There can be no valid reason for authorizing certain things to be done that can clearly be done without the authorization of the bylaws unless the intent is to specify the things of the same class that may be done, all others being prohibited. Thus where Article IV, Section I of the Sample Bylaws (pp. 566-67) lists certain officers, the election of other officers not named, such as a sergeant-at-arms, is prohibited.”

The statement in the LPO Bylaws that the bylaws can be amended by the registered delegates present at an LPO convention serves to prohibit any other body (including the State Committee) from amending the bylaws.

On March 31, 2011, the LPO State Committee did not have the authority to amend the bylaws. In the same way, the Libertarian National Committee does not have the authority to amend the Libertarian Party Bylaws, as that right is reserved for national convention delegates. One may easily imagine the outrage that would rightly occur were the LNC to commit the same type of actions taken by Mr. Wagner and his LPO State Committee colleagues on March 31.

Frequently, especially for infractions of little consequence, if a member of an organization wishes to complain about improper procedure, that member must be present and raise a point of order promptly at the time the breach occurs. (See RONR p. 243 beginning at line 18.) However, there are exceptions to this for particularly harmful breaches such as were committed by the LPO State Committee on March 31, 2011.

RONR on p. 244, lines 4-26 state:

“The only exceptions to the rule that a point of order must be made at the time of the breach arise in connection with breaches that are of a continuing nature, in which case a point of order can be made at any time during the continuance of the breach. Instances of this kind occur when:

- a) a main motion has been adopted that conflicts with the bylaws (or constitution) of the organization or assembly,*
- b) ...*
- c) ...*
- d) ...*
- e) Any action has been taken in violation of either a rule protecting absentees or a rule protecting a basic right of an individual member (p. 255).*

In all such cases, it is never too late to raise a point of order since any action so taken is null and void.”

The motion adopted by the LPO State Committee on March 31, 2011 to replace the existing bylaws and constitution with a substantially different party structure:

- conflicted with the bylaws and constitution of the LPO, which gave amendment authority only to convention delegates
- violated the basic rights of many individual members to have an opportunity to participate in a vote regarding bylaw amendments

Article III.3 of the 2009 LPO Bylaws requires that *“Each membership is valid for the length of time as specified on the application it was submitted on.”* The change of definition of LPO membership in the “new” bylaws would forever deprive some long-term and even life members of the LPO of any future membership rights, without their having had opportunity to vote on the proposed change.

Indeed, since some life memberships were previously given in exchange for substantial financial contributions, one may rightly question whether the actions by Mr. Wagner and his associates to

change the benefits enjoyed by life members can be also considered as a form of misappropriation and violation of contract.

Since that March 31 action violated these principles stated in RONR, it is thus null and void. No new LPO constitution was adopted on March 31. No new LPO Bylaws were adopted on March 31.

It is worth noting that as far as we are aware, at no time has Mr. Wagner or his associates claimed that their actions on March 31, 2011 were in accordance with the LPO Bylaws in effect as of that date.

Appealing to state law for authority

The minutes of the March 31 LPO State Committee meeting reflect that its members (including Mr. Wagner) claimed that Oregon state law, known as Oregon Revised Statutes (ORS), gave the LPO State Committee the authority to amend the bylaws. Mr. Wagner and others have repeated this claim in more detail in the public discussions that followed the events of March 31.

RONR acknowledges that a binding state law takes precedence over a conflicting provision in an organization's constitution, bylaw, or other rules. Thus, if Oregon state law does grant them the claimed authority, then it is relevant.

Election code in the state of Oregon (substantially contained in chapter 248, which can be found on the internet at: <http://www.leg.state.or.us/ors/248.html>) provides for recognition of two classes of political parties, major parties and minor parties. The LPO is considered a minor political party by the State of Oregon.

The passage specifically cited by Mr. Wagner for granting bylaw-amending authority to the LPO State Committee is ORS 248.072, which states:

"248.072 Authority of state central committee. The state central committee is the highest party authority in the state and may adopt rules or resolutions for any matter of party government which is not controlled by the laws of this state. [1979 c.190 §84]"

On first reading, a reader might be inclined to believe that Mr. Wagner's claim could have merit. However, there are at least four important problems with the claim that this Oregon law authorized the LPO State Committee to amend the LPO Bylaws.

- 1) ORS 248.007(3) states in part, *"(3) ORS 248.012 to 248.315 apply only to a major political party that has notified the Secretary of State as provided in subsection (5) of this section that the political party intends to be subject to the provisions of ORS 248.012 to 248.315."*

As section 72 falls between section 12 and section 315, then according to ORS 248.007(3), ORS 248.072 applies ONLY to major parties. The LPO is a minor party, not a major party. Thus ORS 248.072 does not apply to the LPO.

2) The entity which the 2009 LPO Bylaws refer to as the “state committee” is not, and by definition cannot be, the same entity referred to in ORS 248.072 as a “state central committee”.

In ORS 248, the entity called a “state central committee” is constructed in a particular fashion.

Major parties using public primaries elect “precinct committeepersons” (ORS 248.015). “County central committees” in ORS 248 are made up of those precinct committeepersons so elected (248.031). “State central committees” in ORS 248 are composed of delegates from those “county central committees” and some other per-capita county representatives (248.075).

Since the LPO is a minor party, they do not use public primaries. Therefore they cannot have the individuals designated in ORS 248 as “precinct committeepersons”. Therefore they cannot have the entities designated in ORS 248 as “county central committees”. Therefore they cannot have the entities designated in ORS 248 as the “state central committee” which has the authority stated in ORS 248.072.

If the Libertarian Party delegates assembled in national convention decided to rename our organization to be known as “Libertarian Party 501(c)(3),” this action would not make donations to the organization tax deductible in the eyes of the IRS or a court of law.

In the same way, just because the LPO Bylaws name their board of directors a “state committee”, the name similarity does not mean they are, in fact, the same entity referred to in ORS 248 as a “state central committee”.

Since much of the law in the non-applicable section of ORS is dealing with “precinct committeepersons”, “county central committees”, and “state central committees” dependent in their definition upon use of public primaries, it makes perfect sense that ORS.012 to ORS.315 only apply to major parties. Only major parties participate in public primaries.

Items 1 and 2 above clearly demonstrate that Oregon state law neither required nor authorized the March 31 actions of the LPO State Committee.

3) Even if ORS 248.072 were intended by Oregon to mandatorily apply to minor parties, it is unlikely that it would survive a court challenge. The U.S. Supreme Court, in a case known as *Eu vs. San Francisco County Democratic Central Committee*, 489 U.S. 214 (1989), declared as unconstitutional a state law which mandated internal procedures for

political parties on the grounds that the law violated the First Amendment rights of the party members.

4) It is a fundamental principle in the Libertarian Party that the state must not interfere in the peaceful, non-fraudulent and voluntary agreements made between private individuals or organizations. The LPO is a private organization. Its members voluntarily entered into an agreement to conduct LPO business according to rules set forth in their constitution and bylaws. Mr. Wagner and his associates ignored the clear language of the Oregon statutes in an attempt to invoke the power of the state to overturn the agreements by which the LPO members (including the officers) agreed to abide.

It cannot be overemphasized that Mr. Wagner and his associates attempted to use the power of the state to amend the LPO Bylaws, an action they had no authority to perform under those bylaws.

Representatives of the Appellant have claimed that ORS 248.072 does apply to the LPO, yet the bylaws purportedly adopted on March 31 are not in compliance with other portions of ORS 248.012 to ORS 248.315. Notably, the alleged new bylaws do not provide for any county central committee representatives on their state central committee, even though that is how ORS 248 prescribes construction of the state central committee.

When specifically asked about this point during the July 17 teleconference with the LNC's Executive Committee, the Appellant's representatives explained that they had opted out of that aspect as permitted by ORS 248.007. That provision does allow major parties to opt out of the ENTIRE section from 248.012 to 248.315, but says nothing about piecemeal opting out of some portions and keeping others. If the Appellant opted out of other portions of ORS 248.012 to 248.315 regarding county central committee representation, they must have opted out of ORS 248.072 simultaneously. We do not know if the Appellant has actually followed the procedure specified in ORS 248.007 for how a major party opts out of the provisions in question.

Ratification of the LPO State Committee's March 31 actions

In an article (see Appendix L) posted on the Appellant's website after the events of March 31, it was explained to the public that *"Oregon voters will have an opportunity to ratify this new governing structure during the 2012 primary election cycle. Should they ultimately reject it, the previous governing structure will be restored, which includes..."*

If the March 31 LPO State Committee was confident that they had full authority to enact new bylaws for the party, why did they feel the need to refer them to the LPO membership for future ratification? ORS 248.072, which Mr. Wagner has publicly argued gave the LPO State Committee authority to so act, says nothing of a need for ratification by any other body.

In an April 1, 2011 blog post on the “Gold America Group” website, Mr. Wagner is quoted as admitting, “*We do not believe we have the ultimate authority to impose this new governing body on the members of the State of Oregon, and thus will be referring the matter to them for ratification congruent with our mail ballot for nominating candidates in 2012.*”

One wonders whether the Appellant really believes they had the authority to do what they did on March 31, or if they are merely arguing for the result they desire. If they did not believe they had such authority, why did Mr. Wagner file the new documents with the Oregon Secretary of State’s office, alleging them to have been legitimately adopted, even prior to the proposed ratification process?

According to the parliamentary authority of the 2009 LPO Bylaws, since the LPO State Committee’s March 31, 2011 action was in violation of their bylaws, a motion to “ratify” cannot be used to retroactively sanction it.

RONR p. 119, lines 26-35:

“An assembly can ratify only such actions of its officers, committees, delegates, or subordinate bodies as it would have had the right to authorize in advance...nor can it ratify anything done in violation of procedural rules prescribed by national, state, or local law, or in violation of its own bylaws...”

An assembly cannot ratify an action in violation of its own bylaws.

Moreover, what the Appellant proposed as a ratification process is even more skewed than the common understanding of ratification. It’s not Assembly A that the Appellant is asking to ratify a bylaws violation of the fundamental rights of Assembly A. The purported new bylaws radically re-defined membership, so that the purported new membership is a different group than the membership on March 31, 2011. Under this approach some long-time LPO members would not be permitted to vote on whether or not to ratify an action disqualifying themselves from membership. In this case a different group, Assembly B, is being asked to ratify a bylaws violation of the fundamental rights of Assembly A.

One might reasonably ask: If one robs Peter to pay Paul, can Paul remedy Peter’s complaint simply by later ratifying the action?

Did the LPO State Committee have the authority to cancel the convention scheduled by LPO delegates for May 21, 2011?

Below is a significant portion of the minutes of the March 12, 2011 LPO convention (see Appendix G):

LPO members assembled in convention on March 12, 2011 and did not have quorum to conduct business. Rather than adjourning sine die, note that the minutes describe the following sequence:

“Wes Wagner moved to set the time to which to adjourn to May 28th at 11:00am. Orrin Grover moved to amend by striking 28th and inserting 21st.”

David Long raised a parliamentary inquiry as to when the term of office of the officers would end if the motion were to be adopted. The chairperson answered that if the motion were to pass, the term of office of the officers would end ‘at the end of the convention in May.’

The motion to amend was adopted by voice vote. The motion to set the time to which to adjourn to May 21st was adopted by a counted vote of 15 in the affirmative and 14 in the negative.

Wes Wagner moved to set the place to which to adjourn to the same place as the current meeting, or at a place in the Portland area with notice to be sent if the place is changed. The motion to set the place of the adjourned meeting of the convention was adopted by voice vote.”

By adopting the motion to continue the convention at a future date, it prolonged the end of the convention, thus prolonging the term of the officers so that the incumbents were still the officers on March 31. Had the convention adjourned sine die on March 12, the terms of the officers would have ended as of that adjournment.

In public statements, Mr. Wagner and his colleagues have expressed their opinion that when on March 31, the LPO State Committee claimed to have adopted new governing documents, that action rendered as moot the second part of the convention which had been ordered by the delegates. This belief is reflected in an entry posted by the March 31 LPO State Committee on www.lporegon.org explaining their actions on that date (see Appendix L). Note the last sentence states in part that the State Committee would later “consider alternative plans for May 21 when the members’ convention was scheduled to meet again”.

Under this belief, none of the Oregon officers showed up at the second part of the convention on May 21, at which time the convention adjourned sine die, ending the term of Wes Wagner as LPO Chairperson, and ending the term of the other incumbent officers as well.

The question arises whether or not the LPO State Committee on March 31 had the authority to cancel the second part of the convention ordered by LPO members assembled in convention, whether such cancellation occurred by allegedly adopting new governing documents or even by an outright motion to cancel the convention.

RONR, as the parliamentary authority of the LPO has this to say about that question on p 466 lines 7-14:

“In any event, no action of the board can conflict with any action taken by the assembly of the society; and except in matters placed by the bylaws exclusively under the control of the board, the society’s assembly can give the board instructions which it must carry out, and can countermand any action of the board if it is not too late (as it would be, for example, when a contract has already been made).”

Since the LPO assembly on March 12 ordered a continuation of the convention on May 21, the LPO State Committee was obligated to carry out those instructions and did not have any authority of their own to cancel the convention, either directly by adopting a motion to cancel it, or indirectly by adopting another motion which they believed made the ordered convention moot.

The only provision made in the March 12 convention motion (see Appendix G) for a change of plans was in the case of the specified location being unavailable. But that location was available for May 21. Only the location could be changed (with notice). It was not optional whether or not the event would be held on that date.

Were this “cancellation” of the LPO-assembly-ordered convention legitimate, it would have had the effect of extending the terms of the officers for another year until the “ratification” process Mr. Wagner’s group planned for 2012. It would have had the effect of depriving all LPO members the opportunity to participate in a 2011 convention which could elect new officers if they were unhappy with the March 31 actions of the State Committee. Again referring to RONR p. 244, lines 4-26 “... *any action so taken is null and void.*”

Conclusion that Tim Reeves is the LPO Chairperson

The LPO State Committee on March 31 did not have the authority to amend the LPO governing documents. Such action is of such a nature that it is null and void, leaving the 2009 LPO Bylaws still in effect.

The LPO State Committee did not have authority to cancel the May 21 convention ordered by LPO members assembled in convention on March 12th. Such “cancellation” is a breach of such a nature that it is null and void.

Therefore part 2 of the LPO convention which took place on May 21 was proper. The terms of the incumbent officers ended when the May 21 convention adjourned sine die. After the convention adjournment, the remaining members of the LPO State Committee met in accordance with the 2009 LPO Bylaws and properly filled the officer vacancies in accordance with the 2009 LPO Bylaws.

Wes Wagner ceased to be the Chairperson of the Oregon affiliate on May 21. At the time of the LNC’s Executive Committee action on July 18th, he held no official position in the Oregon affiliate. Therefore he cannot be the proper party to act on behalf of the LPO to bring a disaffiliation question from Libertarian Party Bylaws Article 6.6 to the Judicial Committee. Note that provision requires that the “affiliate party” be the one to challenge the revocation. See Appendix M for confirmation that the LPO (as recognized by the LNC Executive Committee) has not authorized Mr. Wagner to file an appeal on behalf of the LPO.

If we in the Libertarian Party cannot govern ourselves by the rules we voluntarily accept for ourselves, it is difficult to understand how we can ask the public to trust us in elected office.

Additional Note

In the materials the Appellant filed with the Judicial Committee is a numbered list of “facts” they allege. Regarding item #1 in that list, the Appellant states, “*As a matter of law within the State of Oregon the officers of the legal entity The Libertarian Party of Oregon (a domestic non-profit corporation chartered under Oregon law, henceforth referred to as LPO) as established by the official registration of the Oregon Secretary of State which can be found at <http://www.sos.state.or.us/elections/doc/polparty.pdf> are as follows...*”

Though it may or may not matter for purposes of this Judicial Committee determination, the LPO is not a corporation chartered under Oregon law. Perhaps the Appellant is confused by certain portions of Oregon election code (such as chapter 248.004) which state that political parties shall be “treated as” non-profit corporations for various circumstances. But if one searches the database of registered businesses in Oregon:

http://egov.sos.state.or.us/br/pkg_web_name_srch_inq.login

one will find that there is no incorporated entity named “The Libertarian Party of Oregon” or anything similar in the state of Oregon.

Respectfully Submitted by

LNC Executive Committee Members: Mark Hinkle (Chair), Mark Rutherford (Vice-Chair), Alicia Mattson (Secretary), Bill Redpath (Treasurer), Kevin Knedler, Dr. James Lark

Other LNC Members: Randy Eshelman, Stewart Flood, Dan Karlan, Wayne Root, Rebecca Sink-Burris, Dianna Visek, Dan Wiener, Andy Wolf