

Response Regarding the July 19, 2011 Appeal to the Libertarian Party Judicial Committee

To Chairman Hall, Judge Gray, Mr. Holtz, Mr. Latham, Mr. Sarwark, Mr. Sullentrup, and Mr. Wrights:

We have prepared the following response regarding the July 19, 2011 appeal to the Libertarian Party Judicial Committee under the jurisdiction of Libertarian Party Bylaws Article 9.2.a (suspension of affiliate parties) using the procedure described in Libertarian Party Bylaws Article 6.6. This is not submitted on behalf of the LNC as a whole, but rather on behalf of those individual consenting LNC members whose names are herein listed.

We believe that even a cursory review of the relevant details of the matter will demonstrate the Appellant is not the Libertarian Party of Oregon (LPO), and Mr. Wagner is not an officer of the Libertarian Party of Oregon. Mr. Wagner's claim to serve as a legitimate officer of the Libertarian Party of Oregon as of July 18, 2011 is based upon (a) actions that violated the bylaws of the Libertarian Party of Oregon in such a way that those actions are null and void, and (b) misuse of Oregon law to justify those violations. The appeal must be denied because Mr. Wagner did not have a legitimate claim to the office of Chairperson in the Libertarian Party of Oregon as of the time of the LNC's Executive Committee's actions on July 18, 2011. Thus he is an improper party to petition the Judicial Committee on behalf of the Libertarian Party of Oregon.

Additionally, the actions by the LNC's Executive Committee on July 18, 2011 did not involve disaffiliation of the Libertarian Party of Oregon, nor did those actions have the effect of disaffiliating the Libertarian Party of Oregon. Nor is there any Libertarian Party rule which requires that a dispute over the identity of officers of an affiliate be "treated as" a disaffiliation. Thus, it is improper for anyone to appeal the actions of the LNC's Executive Committee based upon Article 6.6 and Article 9.2.a of the Libertarian Party Bylaws. Judicial Committee Rule of Appellate Procedure 1 provides that a request for a ruling may be acted upon only when it is "*on a matter identified in the Party's Bylaws as being within the Committee's jurisdiction.*" Since no disaffiliation occurred, the Judicial Committee has no subject matter jurisdiction to hear this particular appeal.

When the Libertarian Party Secretary conveyed the July 18 decisions of the LNC's Executive Committee to Mr. Wagner (see draft minutes in Appendix A and email in Appendix B), he transmitted the following graphic as his organization's official response:



The accompanying email (see Appendix C) included a statement by the Appellant that they did not recognize the LNC as having any authority in this matter. Since the Appellant knew (and has acknowledged) that the LNC does have disaffiliation authority under the Bylaws, the e-mail response may be reasonably viewed as tacit admission that they understand no actual disaffiliation occurred. Yet a few hours after such an admission, the Appellant appealed that same decision to the Judicial Committee alleging that a disaffiliation did happen, for which the LNC had authority but used improper procedure.

We further note that the Appellant's argument repeatedly cites Libertarian Party Bylaws Article 6.5 concerning the autonomy of affiliates. Mr. Wagner does this in the email transmitting the appeal, and the Appellant mentions it twice in its numbered list of facts and arguments. Though the direct initial statement of the appeal is regarding alleged disaffiliation, the Appellant later inserts other alleged bylaw violations into the arguments. Though we deny that there were any bylaw violations in the LNC's Executive Committee's actions of July 18, 2011, we note that the Appellant may not procedurally get a foot in the door using the process in 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 Article 8.13.

Should the Judicial Committee accept the appeal and have a hearing on it, we note that Libertarian Party Bylaws Article 6.6 requires that "*the burden of persuasion shall rest upon the appellant.*"

The LNC's Executive Committee's Actions of July 18th do not Constitute a Disaffiliation of the Libertarian Party of Oregon.

Most notably, the wording of the motions approved by the LNC's Executive Committee on July 18 says nothing of a disaffiliation of the Libertarian Party of Oregon, nor does the wording imply that the Libertarian Party of Oregon has been disaffiliated. There is nothing in the transmission of the motions to Mr. Wagner and Mr. Reeves that indicates the communication was notice of revocation of the LPO's affiliate status with the Libertarian Party. Rather, the wording of the motions acknowledges the continuing affiliate status of the LPO under the same bylaws in use by the LPO for the past two years and with the officers elected by LPO members in accordance with those bylaws.

It is undisputed that on March 31, 2011 there was one and only one affiliate in the state of Oregon, that Mr. Wagner was the Chairperson of that affiliate, and its bylaws were those last amended in 2009. On March 31, Mr. Wagner, along with other incumbent members of LPO State Committee purported to adopt a new set of governing documents. (See Appendix D for minutes of this LPO State Committee meeting.) These purported governing documents are significantly different from the bylaws of the Oregon affiliate, with a different membership from the Oregon affiliate. These documents were not approved by the membership of the Oregon affiliate in accordance with their bylaws.

In effect, the Appellant attempted to create a successor organization and absorb the assets of the predecessor organization without the consent of those in the predecessor organization empowered to make such a decision.

While Mr. Wagner and his associates are free to create a new organization that advances libertarianism, the new organization is not entitled to the assets of the original organization (such assets include the right to use the name Libertarian Party), nor can they claim to hold positions as officers of the original organization once they have been replaced in accordance with the original organization's bylaws.

At no time did this new organization with its new bylaws and new set of members petition the LNC under Libertarian Party Bylaws Article 6.2 to be recognized as the Oregon affiliate. At no time did the LNC vote to create a second affiliate in the state of Oregon (which would violate the Libertarian Party Bylaws).

On May 21, LPO members who denied the legitimacy of the March 31 actions of the LPO State Committee met in accordance with their 2009 bylaws and elected new officers. Mr. Wagner was not elected to any officer position. Rather, Tim Reeves was elected as Chairperson. Beginning at that point in time, there were two groups claiming to be the leadership of the same affiliate.

This story began with one Oregon affiliate on March 31, 2011. The LNC is the only entity which can add Libertarian Party affiliates, but since that date the LNC has not voted to charter any new Oregon affiliates. So with only one Oregon affiliate in existence, had we disaffiliated anyone in Oregon, we would have been left with zero Oregon affiliates. Instead at the end of the story we have acknowledged the same affiliate remaining in Oregon, still operating under the same bylaws and with the same membership definition as at the beginning of the story.

The LNC's Executive Committee has not disaffiliated the LPO. The LPO continues to be an affiliate of the Libertarian Party in good standing.

Conclusion

There is a distinction between the officers of an organization and the organization itself. The organization is made up of the membership operating under the rules described in governing documents to which the members have voluntarily subscribed. The officers are merely those who temporarily hold positions of leadership of the organization and make decisions on the organization's behalf, subject to the rules of that organization.

The argument advanced by the Appellant implicitly seeks to blur this important distinction, and effectively equates Mr. Wagner's claim to the leadership as being the equivalent of being the organization itself - and that the LNC's failure to recognize his claim to the position is equivalent to our not recognizing the organization.

Indeed, following the Appellant's argument to its logical conclusion would imply that any incumbent officer of a state affiliate who fails to be re-elected to his position could appeal to the

Judicial Committee of the national Libertarian Party and claim that the new officers cannot assume their rightful positions unless the LNC first “disaffiliates” the old officers with a ¾ vote.

The implications of this novel theory are very different from the clear design of the Libertarian Party Bylaws. It allows the possibility that both action and lack of action by the LNC in this realm constitute "disaffiliation." It allows a super-minority of just over ¼ of the LNC to effect a similar “constructive disaffiliation” of the other Oregon group. These implications are discussed in the other material submitted with this response.

We believe that logic requires a conclusion that no disaffiliation took place. Because no disaffiliation took place, no appeal can be brought to the Judicial Committee under Article 9.2a, subject to the process spelled out in Article 6.6.

Other Materials Submitted

We recognize the difficult position in which the Judicial Committee finds itself, in that it must to some degree evaluate the merits of the case to determine whether the Appellant is the proper party to submit this appeal, or to determine whether there was a disaffiliation. Thus we are providing a substantial amount of additional relevant detail to demonstrate thoroughly that the Appellant has no legitimate claim to be the Libertarian Party of Oregon and to address other questions raised in the appeal. This material explains the collective reasoning behind the LNC’s Executive Committee decisions of July 18. In addition, the material demonstrates clearly that an LNC decision about the dispute was not only reasonable, it was necessary for bylaw compliance.

Statement of Appreciation

Allow us to express our appreciation for your service to the Libertarian Party, and for your consideration of our response. We welcome the opportunity to answer whatever questions you may have about this situation.

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