

APPEAL TO THE JUDICIAL COMMITTEE OF THE LIBERTARIAN PARTY

Wes Wagner vs. the Libertarian National Committee

The Judicial Committee decided, in a 4 to 3 vote, that the action of the Libertarian National Committee and its Executive Committee was void, as it violated the Libertarian Party Bylaws.

Voting in the Majority: Gray, Hall, Sarwark and Wrights

Dissenting: Latham, Holtz and Sullentrup

Opinion of the Majority, rendered August 25, 2011

In the matter submitted to us as the Judicial Committee of the National Libertarian Party, both the appellant and the appellee agreed that still at this time there is an entity known as the Libertarian Party of Oregon.

We find that the Libertarian Party of a particular state, in this case the State of Oregon, is the entity that is recognized by the secretary of state, in this case the Secretary of State of Oregon.

That state's party that is recognized by the secretary of state may, under the bylaws of the National Libertarian Party, be disaffiliated by the Libertarian National Committee if 3/4ths of its members vote in favor of a motion of disaffiliation for stated cause. Then if that motion passes, there would at that moment be no Libertarian Party from that particular state. Thereafter, the LNC would be empowered under the bylaws to vote in favor of the affiliation of another Libertarian Party from that state, which party could then seek recognition from that state's secretary of state.

Based upon the record presented to us, the LNC did not hold either of these votes, and in fact no cause for disaffiliation was ever formally stated. But the LNC and the Executive Committee did purport to recognize and empower one group (the Reeves Group) over another group (the Wagner Group) to represent the Libertarian Party of Oregon. This action was beyond the authority of the LNC or EC based upon the bylaws, and is void.

Opinion of James Gray, joined in by Bill Hall, Nicholas Sarwark and Lee Wrights

Dissenting Opinion of Rob Latham, rendered August 25, 2011

I write separately to explain my dissenting vote. Mindful that a credentialing process can be abused to effect a constructive disaffiliation and such arbitrary behavior should be guarded against, after hearing from the petitioners, respondents, and amici I am not persuaded that such an abuse occurred here. The Bylaws do not require the Libertarian National Committee to revoke the status of an affiliate party when a change in an affiliate party's leadership occurs,

nor when two or more claimants seek affiliate status. The Bylaws also do not require the Libertarian National Committee to defer to any outside political body's determination as to which organization shall be chartered or granted affiliate status. Nor do the Bylaws require the Judicial Committee to address every intra-party dispute; it has limited subject matter jurisdiction. Therefore, in my view, our committee should dismiss the petition because the appellant does not represent an organization that had its affiliate status revoked. Accordingly, the Judicial Committee has no subject matter jurisdiction. (Article 6, Section 6 and Article 9, Section 2.a.) My dissent should not be construed as an opinion on the merits of the Executive Committee of the Libertarian National Committee's determination as to which organization it recognized as its affiliate in this matter.

Opinion of Rob Latham, Joined in by Brian Holtz

Dissenting Opinion of Brian Holtz, rendered August 25, 2011

I further dissent from the majority's dicta about state government being the final arbiter of what entity in the state is the Libertarian Party of that state: "We find that the Libertarian Party of a particular state, in this case the State of Oregon, is the entity that is recognized by the secretary of state, in this case the Secretary of State of Oregon."

1. This finding is not required for the majority's conclusion that what the Executive Committee did was a disaffiliation attempt and therefore violated Bylaw 6.6.

2. This finding suggests that inertia in record-keeping by the government can trump the operation of the bylaws that Libertarians voluntarily agree to.

3. This finding sets up an imminent collision with the Reeves (re-)affiliation that the majority effectively invites the LNC to perform. If the LNC (re-)affiliates the Reeves group, Wagner et al. should only need to cite the Oregon SoS web site to win their subsequent 6.6 appeal. The SoS already wrote: "we are unable to process any changes without written approval from the current chair of record of the Libertarian Party of Oregon". The dead hand of an Oregon government webmaster would then apparently control LNC affiliation in Oregon.

4. This finding is in tension with the Libertarian Party Platform, which asserts that political parties are "private voluntary groups" that "should be allowed to establish their own rules". The government might currently impose on us the rules of its game, but we should at least demand to decide who our team is.

Opinion of Brian Holtz

Dissenting Opinion of Bob Sullentrup

I am submitting a dissenting opinion separately because I believe the issues addressed by others are splitting hairs too finely and are not needed for this analysis. I believe this is fundamentally a very simple matter. At the same time, I recognize that brighter minds than mine may be able to see things on a higher plane than I can.

I liken this situation to that of a baseball game in which two baserunners end up on second base. One of the runners is tagged out, and the other is safe. The runner who is called out wants an official review. As a part of the review team, the Judicial Committee, I have found nothing to overturn the LNC's ruling. Accordingly, the ruling on the field is confirmed and should stand.

Some have criticized my analysis in that the LNC is not the umpire, but a part of the LNC-Reeves baserunner pair. Moreover, the Judicial Committee may not be the umpire but league commissioner, and commissioners do not make such on-field decisions (pine tar game notwithstanding)¹. Perhaps the criticism is absolutely correct, particularly since I cannot perceive how these points matter.

In any case, I support the LNC's call and believe the Judicial Committee has the jurisdiction to rule on the matter.

Opinion of Bob Sullentrup

¹ George Brett of the KC Royals was called out in Yankee Stadium after hitting a home run. His bat had a trace of pine tar above the specified limit which as I recall was the width of home plate. Brett went bonkers and the game was replayed weeks later from that point in the game, overturning the umpire's call on the field by the commissioner's office.