

APPEAL TO THE JUDICIAL COMMITTEE OF THE LIBERTARIAN PARTY

Brad Ploeger, et al, v. the Libertarian National Committee

The Judicial Committee decided, in a 4 to 3 vote, to deny the Appeal of Brad Ploeger, et al, and uphold the action of the Libertarian National Committee in establishing a minimum registration fee for Delegates to the 2012 Libertarian Party National Convention.

Voting in the Majority: Hall, Holtz, Gray and Sullentrup

Dissenting: Latham, Sarwark and Wrights

Opinion of the Majority, rendered April 21, 2012

Having reviewed the briefs and arguments made by or on behalf of the Petitioners and Respondents, we have concluded that the National Committee acted within its powers in deciding to set a \$94 minimum registration fee for delegates attending the 2012 Libertarian Party National Convention.

The registration fee is not a restriction on the process for being chosen as a delegate by an affiliate. Article 11, Section 3(a) of the Bylaws explicitly distinguishes between "accreditation" and "registration": "At all Regular Conventions delegates shall be those so accredited who have registered at the Convention." The Bylaws thus mention "registration" but do not describe it.

Robert's Rules describes "registration" in detail and says it "normally" includes "paying the registration fee." Article 16 of the Bylaws says:

The rules contained in the current edition of Robert's Rules of Order, Newly Revised shall govern the Party in all cases to which they are applicable and in which they are not inconsistent with these bylaws and any special rules of order adopted by the Party.

Roberts discusses a registration procedure (*viz.*, when to stop accepting registrations) that it says has to be overridden in the Bylaws for the default process not to be in force. This reinforces the conclusion that the detailed "normal" registration steps need not be reiterated in the Bylaws in order to be authorized. "Signing the list of registrations" is also not reiterated in the Bylaws, but Petitioners would not dare argue that delegates may not be required to sign the delegate list in order to receive their credentials.

Nobody is arguing that Party rules require a registration fee. Mr. Ploeger's brief on behalf of the Petitioners addresses the crucial "normally" language, primarily to rebut a straw man – that a registration fee must be imposed at every convention. Mr. Moulton's "surplusage" argument contained in his brief in support of the Petitioners is aimed at the same straw man.

None of the registration steps described as "normal" in Robert's Rules can be construed as abridging affiliate autonomy unless their implementation is so unreasonable as to materially restrict the ability of affiliates to choose their delegates. No such restriction is evident here, and Petitioners did not argue that any affiliate has chosen delegates differently because of the

registration fee. If an implementation of registration steps is reasonable (e.g., proving identity, signing in, paying a cost-sharing fee, getting a photo badge), then an affiliate's autonomy is not abridged just because some of their delegates decide not to comply with the registration process.

Some (but not Mr. Ploeger's brief on behalf of the Petitioners) argue that not having a registration fee is a custom that has now become binding. This is a strong argument, if it could be proven. However, not all prior conventions have available minutes, and surviving minutes do not record such registration procedures. We do not even know when between 1972 and 1989 the registration language was added to the Bylaws. In the absence of reliable evidence about this alleged custom, the Party of Principle should be governed not by lore but by the text of its rules.

Mr. Ploeger's argument on behalf of the Petitioners that the delegate registration fee violates the Robert's rule against member assessments beyond Bylaws-authorized dues does not ring true. That rule is irrelevant, as it merely restricts the Party from levying extra charges on all members, but does not preclude charging some members for activities that not all members undertake.

As both the Petitioners and Respondents agree, the Judicial Committee has jurisdiction of this matter under Article 8, Section 13, of the Bylaws, which provides:

Upon appeal by ten percent of the delegates credentialed at the most recent Regular Convention or one percent of the Party sustaining members the Judicial Committee shall consider the question of whether or not a decision of the National Committee *contravenes specified sections of the Bylaws* (emphasis added).

The Bylaws neither expressly authorize nor expressly prohibit charging delegates a convention registration fee, and thus the decision of the National Committee cannot be voided by the Judicial Committee, because the decision does not contravene a particular section of the Bylaws.

The Bylaws do provide that "[t]he National Committee shall have control and management of all the affairs, properties and funds of the Party consistent with these Bylaws." See Bylaws Article 8, Section 1. The Bylaws also require the Libertarian Party to hold a biennial national convention, a task which falls to the National Committee.

The \$94 minimum registration fee set by the National Committee appears to be reasonably related to the actual anticipated per delegate cost of staging the convention business sessions. Consequently, the National Committee had a rational basis for the fee, and its actions were within its authority to plan and manage the convention.

Opinion of Bill Hall and Brian Holtz, joined in by James Gray and Robert W. Sullentrup. Robert W. Sullentrup has also issued a separate concurring opinion.

Bradley Ploeger vs. Libertarian National Committee

Opinion of Robert W. Sullentrup

I reject the claim brought by Mr. Ploeger on all counts and without exceptions, conditions or qualifications.

Missing from Mr. Ploeger's brief is the answer to the obvious question of how the party is supposed to create the convention that so many are expected to attend for free? With no apparent need for any of the convention goers to assume any responsibility, it's just as if conventions are to spring from the ether, grow on trees or materialize in the morning after someone leaves milk and cookies on the kitchen table.

For some time prior to my being on the National Committee, conventions were financed via the deceit if not fraud of concealing from high-end package buyers that their payments were subsidizing freeloaders. Now that this practice has been exposed and corrected, and because Mr. Ploeger has broached a petition to continue this injustice, I shall provide the analysis for my unmitigated rejection of this claim.

Bylaws Articles 6.3 and 11.3.b give affiliates control of which of their members shall be the delegates they send to the national convention. The national party has no role in selecting those delegates. In no case does it remove a delegate's obligation to register at the convention.

Being named a delegate delivers the delegate to the front door of the convention, conveying the permission to represent the state affiliate at the convention. To get through the door, delegates must be admitted. Chapter XIX of RONR lays out the procedure for being admitted to a convention. It is abundantly clear that admission will not occur until the delegate's fees are paid. There is nothing whatsoever about entitlements of named delegates. Written in a more responsible era, the text lays out the common-sense notion that if the delegate does not pay the fee, then it is the obligation of the affiliate who sent him or her to assist with the fee and travel and accommodations as well. Typically the affiliate will expect something in return, most likely a convention report from the delegate.

If Chapter XIX weren't enough, the brilliant opinion from Henry M. Robert III, the grandson of the original RONR author, of February 19, 2010 supports the position that no provision in the party bylaws, our rules or parliamentary authority prohibits charging convention fees. Moreover, the National Committee has the authority to set convention registration fees.

As the opinion points out, it is not appropriate to levy additional charges on party members AS MEMBERS absent any bylaws provision. But if an organization were not able to assess additional fees for special dinner dances open to only members, or for conventions, then what else would be off limits? Mr. Robert noted, "If the organization produced publications or other items for sale, members could obtain them – presumably in unlimited quantity – for free, and only non-members could be charged."

The bottom line is members and affiliates have rights. *They also have obligations.*

Beyond the technical arguments listed above, as the Party of Principle we must crush initiatives that would introduce in any form or to any degree *servitude – part time slavery* — into convention financing. No one has a claim on any other convention goer's resources, or on the portions of their lives that they devote to earning the funds to subsidize another's attendance. If such claims are enabled by deceit, fraud, force or by default from the paltry contributions of party slackers, they command portions of others' lives and as such are unjust and inexcusable.

As a fairer approach, may I suggest the more affluent petitioners voluntarily subsidize convention freeloaders? I was willing to help do that for the 2010 convention held in my home town¹ and I encouraged others to support an initiative I termed the *Missouri Compromise*. Had it been enacted, demand from freeloaders and supply from contributors would have been in equilibrium with no coercion or fraud.

If demand exceeded supply then the free market would have resolved the rest. The United States of America is the greatest country the world has ever known in which productive individuals can prosper, and \$94 should not be a burden for anyone willing to participate. Perhaps prospective convention goers could persuade other Libertarians that their party contributions and knowledge were sufficient to merit a \$94 subsidy. Fee-paying delegates do this all the time in the general economy using the skills and abilities they have honed and freely exchange via the products and services they offer.

The last place in the universe where I would expect to find people bellowing for convention subsidies from their compatriots is the Libertarian Party. It distresses me that members of this party, the party with the best playbook for restoring freedom to America in our vital and historic mission on which we have embarked, would prefer to assume the role of aggrieved 'victim' (abuse by conversion to a cash bar) and to reject shared responsibility, letting this party and our earnest efforts dissipate into a cesspool of adamant entitlement akin to that which we strive elsewhere to defeat.

Even Democrats² in this country at one time knew better, and it is significant in itself that Democrats be quoted here as paragons of responsibility. With apologies to President Kennedy, "Ask not what your party can do for you, ask what you can do for your party." Our party is replete with those for whom it is now too much to ask to abandon their purported entitlement to a free convention over \$94, less than a cup of coffee a week. Adopt a supportive attitude being willing to share in convention costs if only because we're all in this together? Faggedaboutit.

In too many quarters there is little interest anymore in asking what one might do for the party. I am ashamed and dispirited for us all.

¹ Point of information. Can anyone remind me who won the 2011 World Series? I seem to have forgotten.

² What's the difference between a liberal Democrat and a Libertarian? One good course in economics.

Opinion of the Minority, rendered April 21, 2012

The Libertarian National Committee's decision to impose a registration fee¹ upon delegates who intend to participate in the business at the Libertarian Party's 2012 convention creates a new and disadvantaged class ("can't pay or won't pay") of prospective delegates who would be unable to participate in a convention vote to approve or reject such a registration fee before it is imposed. The LNC's decision even bars a life member of the Party, selected as a delegate by his/her state-level affiliate party – who may be accustomed to attending Regular Conventions without being *required to pay* a registration fee – from receiving delegate credentials unless the registration fee is paid first.

Petitioners Brad Ploeger *et al* and Respondent Libertarian National Committee appear to agree that the Party's Bylaws are silent with respect to a registration fee. "The Bylaws themselves do not directly define 'registered' or 'registration.'" Balch Brief for Respondents, at 3; *see also* Brief for Petitioners, at 14. If the Bylaws are silent on the question, how can a decision of the National Committee contravene a specified section of the Bylaws?² The specified Bylaw is Article 16, which incorporates Robert's Rules of Order, Newly Revised (RONR) by reference. *See* Bylaw 16; *see also* Balch Brief for Respondents, at 3.

Respondent LNC's brief offers further support for the Judicial Committee's authority to consider whether the LNC's decision to impose a registration fee comports with the Party's Bylaws:

A decision by the Judicial Committee in this case that the National Committee was within its authority in setting a registration fee that is unquestionably reasonably related to recouping the costs of conducting the convention would by no means foreordain its conclusion in very different fact conditions – to take an absurd example, such a decision would not preclude the Judicial Committee from considering whether a convention registration fee set at \$100,000 was inconsistent with the Bylaws, based on a claim that, by preventing the attendance of all but a handful of extremely wealthy delegates, it was intentionally designed to deter most delegates from attending the convention.

Balch Brief for Respondents, at 7-8. If this is true, what specific bylaw would be contravened that would authorize the Judicial Committee to consider a \$100,000 fee, but not a \$94 fee? The answer, again, is Article 16.

Looking to RONR, one of the Principles of Interpretation of bylaws states: "**If the bylaws authorize certain things specifically, other things of the same class are thereby prohibited.**" RONR (11th ed.), p. 589, ll. 33-34 (emphasis supplied).

¹ The so-called TANSTAAFL ("There Ain't No Such Thing As A Free Lunch") package "is the minimum required payment for Delegates and Alternates to enter the Convention to participate in Libertarian Party business, and in Libertarian Delegate meetings and activities." 2012 Libertarian National Convention website (www.betonliberty.org), last accessed April 22, 2012.

² Upon appeal by ten percent of the delegates credentialed at the most recent Regular Convention or one percent of the Party sustaining members the Judicial Committee shall consider the question of whether or not a decision of the National Committee contravenes specified sections of the Bylaws. If the decision is vetoed by the Judicial Committee, it shall be declared null and void. Bylaws 8.13.

The Party's Bylaws authorize certain steps for members to become delegates. *See, e.g.,* Bylaw 6.3: "Each state level affiliate party shall, in accordance with its own Bylaws and these Bylaws, determine who shall be its delegates to all Regular Conventions."

Bylaw 11.3 provides:

Delegates:

- a. Delegates shall be required to be members of either the Party or an affiliate party. At all Regular Conventions delegates shall be those so accredited who have registered at the Convention. At all Non-Regular Conventions, any person who wishes to attend may do so.
- 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 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 only *condition* for registration in the current bylaws states: "Failure to submit a listing of delegate/alternate names and addresses, as prescribed within these Bylaws, shall cause no delegation to be registered from that affiliate party." Bylaw 11.5.d. (emphasis supplied). Therefore, per RONR's principles of interpretation, because a registration fee is not authorized by the current bylaws, it is therefore prohibited by the current bylaws.

Respondent LNC's assertion that "paying the registration fee" is listed among a list of "normally" included registration steps per RONR is unpersuasive because it conflicts with the Party's history of not requiring delegates or alternates to pay to participate in Party business at Regular Conventions. Respondent's proposed "reasonable relationship" test for registration fees is also unavailing because such a test is limited only by one's imagination.

If a further shift of convention costs from the LNC to delegates is to be undertaken, the Party's Bylaws require that such a shift be approved by the Party's delegates beforehand. As such, I would declare the LNC's decision to impose a registration fee upon delegates attending the 2012 Regular Convention null and void.

Opinion of Rob Latham, joined in by Nicholas Sarwark and R. Lee Wrights.