

## Dissenting Opinion

The only question currently before the Judicial Committee is that portion of the R. Lee Wrights appeal seeking an advisory opinion on the following hypothetical question for which no relief was requested:

*4. Does a lapse in dues require a "for cause" removal as described in Article 8, Section 5?*

The short answer to that question is NO. A lapse in dues by a member-at-large of the LNC does not require a "for cause" removal as described in Article 8, Section 5 of the Libertarian Party Bylaws.

Article 8, Section 4 and Article 5, Section 6 contain provisions dealing with the eligibility of LP members to serve on the National Committee and to hold National Party office.

Article 8, Section 4 reads as follows:

*A National Committee member shall be a sustaining member of the Party, and shall not be the candidate of any party except the Party or an affiliate.*

The relevant portion of Article 5, Section 6 reads as follows:

*Only sustaining members shall be eligible to hold National Party office or be a candidate for President or Vice-President.*

The wording in Article 8, Section 4 that "A National Committee member SHALL (emphasis added) be a sustaining member of the Party" is clear enough and is reinforced by the wording in Article 5, Section 6 that "only sustaining members shall be eligible to HOLD (emphasis added) National Party office". It is evident that "National Party office" refers at least to all members of the Libertarian National Committee and not just to the "Officers" mentioned in Article 7, Section 1 of the bylaws.

If a lapse in "sustaining membership dues" did require a "for cause" suspension under Article 8, Section 5 of the Libertarian Party Bylaws, inaction by the LNC or a vote against suspension of a member whose sustaining membership dues lapsed would enable that person to continue to attend and vote at LNC meetings even though ineligible to serve under the LP Bylaws. Since the LNC has no power to suspend or ignore the provisions set forth in the Libertarian Party Bylaws, the conclusion must be drawn that a lapse in dues cannot require a "for cause" suspension under Article 8, Section 5 of the LP Bylaws.

One other point is worth making. What exactly does "for cause" mean and can it reasonably encompass a "lapse in dues"? Article 13 of the Libertarian Party Bylaws (entitled "Parliamentary Authority") reads as follows:

*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.*

It is therefore proper for this Judicial Committee to look to Robert's Rules of Order, Newly Revised for guidance on exactly what the phrase "for cause" means. That guidance is found in Chapter XX entitled "Disciplinary Procedures" specifically in the section entitled "Remedies Against Misconduct or Dereliction of Duty in Office". On page 642, the following passage can be found:

*Except as the bylaws may provide otherwise, any regularly elected officer of a permanent society can be deposed from office for cause – that is, misconduct or neglect of duty in office...*

The phrase "that is" is equivalent to "i.e." which means that the exact definition of "for cause" is "misconduct or neglect of duty in office". Since a lapse in paying dues is neither "misconduct" nor a "neglect of duty in office", a lapse in dues cannot require a "for cause" removal under Article 8, Section 5 of the Libertarian Party Bylaws.

That having been said, it is our position that the Judicial Committee does not have "subject matter jurisdiction" to hear this appeal. The Judicial Committee is not a Court of General Jurisdiction. Our "subject matter jurisdiction" is explicitly set forth in the Libertarian Party Bylaws. When we receive an appeal, the Judicial Committee must determine whether the issue appealed is within our "subject matter jurisdiction". The Judicial Committee cannot point to subsequent actions or decisions of the LNC for which we might have jurisdiction and then bootstrap that back to the original appeal, which we did not have the power to hear in the first place.

The "subject matter jurisdiction" of the Judicial Committee is set forth in two sections of the Libertarian Party Bylaws. The first section is Article 8, Section 12 and the second section is Article 9, Section 2. Each provides independent grounds for "subject matter jurisdiction".

The relevant portion of Article 8, Section 12 reads as follows:

*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.*

The appeal currently before the Judicial Committee does not arise under Article 8, Section 12. It is not an appeal by "ten percent of the delegates credentialed at the most recent Regular Convention" nor is it an appeal by "one percent of the Party sustaining members". It is instead an appeal by one individual and therefore the Judicial Committee cannot claim Article 8, Section 12 as the grounds for having "subject matter jurisdiction" over the R. Lee Wrights appeal, it cannot cite "a decision of the National Committee" as grounds for accepting the Wrights appeal, and it has no power to declare any "decision of the National Committee" null and void.

The only section of the Libertarian Party Bylaws that is relevant to whether the Judicial Committee has "subject matter jurisdiction" over the R. Lee Wrights appeal is Article 9, Section 2.

Article 9, Section 2 reads as follows:

**2. The subject matter jurisdiction of the Judicial Committee is limited to consideration of only those matters expressly identified as follows:**

- a. suspension of affiliate parties (Article 6, Section 6),**
- b. suspension of officers (Article 7, Section 8),**
- c. suspension of National Committee members-at-large (Article 8, Section 5),**
- d. voiding of National Committee decisions (Article 8, Section 11),**
- e. challenges to platform planks (Rule 7, Section 9),**
- f. challenges to Resolutions (Rule 8, Section 2), and**
- g. suspension of Presidential and Vice-Presidential candidates (Article 12, Section 5).**

It is pretty clear that the delegates who adopted the above language meant it when they stated the subject matter jurisdiction of the Judicial Committee is LIMITED (emphasis added) to consideration of ONLY THOSE MATTERS EXPRESSLY IDENTIFIED (emphasis added) and then went on to state the exact sections of the bylaws and convention rules under which the Judicial Committee has the power to exercise that subject matter jurisdiction.

The only possible stated grounds under which the Judicial Committee can take "subject matter jurisdiction" over the amended appeal of R. Lee Wrights is Article 9, Section 2, Sub-Section c dealing with suspension of National Committee members-at-large under Article 8, Section 5.

The relevant portion of Article 8, Section 5 reads as follows:

*The National Committee may, for cause, suspend any member-at-large by a vote of 2/3 of the entire National Committee. The suspended member-at-large may challenge the suspension by an appeal in writing to the Judicial Committee within seven days of receipt of a notice of suspension. Failure to appeal within seven days shall confirm the suspension and bar any later challenge or appeal...At the hearing the burden of persuasion shall rest upon the appellant. The Judicial Committee shall either affirm the National Committee's suspension of the member-at-large or order reinstatement of the member-at-large within 30 days of the hearing.*

In the circumstances that gave rise to the R. Lee Wrights appeal, the National Committee did not by a 2/3 vote of the entire LNC suspend R. Lee Wrights "for cause" and did not send him a notice of suspension. Hence, the Judicial Committee lacks "subject matter jurisdiction" over his appeal. Had he been suspended "for cause" by a 2/3 vote of the entire LNC, that action would be within the subject matter jurisdiction of the Judicial Committee, and if in such a situation, we found in his favor, we could order reinstatement. However, in this case, Mr. Wrights' sustaining membership dues lapsed and his seat was declared vacant. He was not "suspended" under the provisions of Article 8, Section 5. Therefore, it is clear that the Judicial Committee has no jurisdiction in this matter.

The amended appeal submitted to the Judicial Committee by R. Lee Wrights was as follows:

*To: Libertarian Party Judicial Committee*

*From: R. Lee Wrights*

*On April 17, I appealed my suspension from the LNC. After further consideration, I want to clarify exactly what I am asking for in my appeal. I respectfully request the Committee to rule on the following:*

- 1. Does a failure to maintain a sustaining membership constitute a resignation as claimed by the Secretary and Chair?*
- 2. If Question 1 is answered in the affirmative, how long is the grace period between the time when the membership fee becomes due and the supposed resignation?*
- 3. If Question 1 is answered in the affirmative, does the Secretary or Chair have the authority to decide if and when an effective resignation has taken place?*
- 4. Does a lapse in dues require a "for cause" removal as described in Article 8, Section 5?*

*Respectfully submitted by,*

*R. Lee Wrights, At-large*

It is true that in the original appeal submitted by R. Lee Wrights, he appealed his "suspension" from the LNC. Perhaps upon realizing he had not been "suspended" from the LNC, he submitted the above amended appeal asking the Judicial Committee to "rule on" the questions posed.

On the first three questions raised by R. Lee Wrights in his amended appeal, the Judicial Committee voted 4 to 3 against it having "subject matter jurisdiction". All three questions dealt with asking the Judicial Committee to issue an advisory opinion on a matter dealing with what Mr. Wrights refers to as a "resignation", a "supposed resignation" and an "effective resignation". It does not deal with a "suspension" having taken place under Article 8, Section 5 of the bylaws. Ruth E. Bennett, Allen Hacker, Nick Sarwark & Dr. Tom Stevens voted against the Judicial Committee having subject matter jurisdiction on these questions. Joe Cobb, David F. Nolan and Travis Nicks voted in favor of the Judicial Committee having jurisdiction so the vote was 4 to 3 against jurisdiction.

The fourth question posed by R. Lee Wrights was the following:

- 4. Does a lapse in dues require a "for cause" removal as described in Article 8, Section 5?*

There are problems obviously with the wording of the question itself since Article 8, Section 5, speaks of a "suspension" "for cause" and not a removal but that aside, the Judicial Committee voted it had "subject matter jurisdiction" over this hypothetical question even though no relief was sought by the appellant, no "suspension" under Article 8, Section 5 had taken place, and no relief could be granted

since “reinstatement” was impossible since no “suspension” had taken place. Ruth E. Bennett, Joe Cobb, Allen Hacker, Travis Nicks, David F. Nolan & Nick Sarwark voted the Judicial Committee had jurisdiction over Question 4 of the R. Lee Wrights appeal. Only Dr. Tom Stevens voted against the Judicial Committee having “subject matter jurisdiction”. On whether to accept Question 4 of the R. Lee Wrights appeal for the purposes of holding a hearing, (Ruth E. Bennett, Joe Cobb, Travis Nicks, David F. Nolan & Nick Sarwark voted to hear the appeal on Question 4. Allen Hacker & Dr. Tom Stevens voted against hearing the appeal.

To reiterate, since the National Committee did not “suspend” R. Lee Wrights under Article 8, Section 5 of the Libertarian Party Bylaws, the Judicial Committee does not have “subject matter jurisdiction” over his appeal. In addition, R. Lee Wrights seeks no relief when he asks the Judicial Committee to “rule on” a hypothetical question and to issue an advisory opinion. Finally, the only relief that could be granted under Article 8, Section 5 is the ordered “reinstatement of the member-at-large” but since R. Lee Wrights was never suspended, his reinstatement cannot be ordered.

While it is clear that a lapse in dues does not require a “for cause” removal under Article 8, Section 5 of the Libertarian Party Bylaws, it is also true that Article 8, Section 4 does not contain explicit language describing a process for declaring a member-at-large’s seat vacant upon that member-at-large’s sustaining membership dues lapsing. However, the absence of such language does not imply that there is no automatic removal for failure to satisfy the eligibility requirements. The Bylaws Committee needs to address this issue and to recommend a process that can be followed when it is discovered that a member-at-large or any other person holding National Party office is found to be in violation of the eligibility requirements for that office. The proposed amendment might make the loss of eligibility result in an automatic removal from office, or it may state that the person holding National Party office be given 30 days to pay the lapsed dues or to resign as the candidate of another political party before being removal. Ultimately that decision will be and should be in the hands of the credentialed delegates meeting at the next Libertarian Party National Convention.

Respectfully submitted,

Dr. Tom Stevens

Judicial Committee Member