

LNC Response to Judicial Committee Petitions

on the matter of alleged constructive disaffiliation of LP Delaware

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General Response

Two distinct petitioners have filed complaints of constructive disaffiliation with the Judicial Committee (JC). The Libertarian National Committee (LNC) has made it clear that the Libertarian Party of Delaware (LPDE) has not been disaffiliated, in actuality or constructively, and again reiterates this fact.

The only question that can currently be considered, per the bylaws, is the question of disaffiliation (which petitioners have labeled “constructive disaffiliation”) per Article 5, Section 6 (Appendix B). The LNC objects to the consideration of other questions without a petition from the membership on those matters, submitted by “*ten percent of the delegates credentialed at the most recent regular convention or one percent of the Party sustaining members...*” per Article 7, Section 12 (Appendix C).

The LNC objects to the questions outside of its decision-making abilities and the scope of the JC. The election of a Regional Alternate is not a decision of the LNC or any member thereof, and outside the scope of Article 7, Section 12. In this particular case, it has been conveyed to the LNC that the particular decision was made by a majority vote of the other state chairs in the region.

On November 21st, 2021, the LNC considered a motion to disaffiliate LPDE. That motion failed, and therefore no action was taken by the LNC; the LNC continues to recognize our one affiliate in Delaware and respects the autonomy of the affiliate. A party, as an organization, is its *membership*; not a particular slate of leadership. The LNC is asking those who were qualified as members of LPDE prior to the controversy to resolve the question of “who is the leadership of LPDE” amongst themselves. The interest of the LNC is only in determining the proper interface with our one and only Delaware affiliate.

Regarding the claim of “constructive disaffiliation”, unlike *Wagner v LNC* the LNC specifically did not choose a “side” to empower, and is specifically treating both claimed leadership groups equally until the matter is resolved. The LNC has specifically not recognized one slate of leadership over another, has asked the members of LPDE to let us know who their leadership is, and has provided a suggested pathway to do so. In the meantime, the LNC is empowered to engage in activities with non-affiliates as well (eg. LNCC, LLCC, Frontier Project), and does not violate the “one affiliate” clause in doing so.

Unlike *Wagner v LNC*, ballot access has not (yet?) been litigated; thus it should not be a determining factor in this appeal.

It is our sincere wish that the members in Delaware resolve their current leadership issues on their own, ideally without litigation.

The following pages present each section of the motion passed by the LNC and respond to the claims made by the petitioners in regard to each section. If additional information is requested

by the JC, or the JC decides to review items to which the LNC objects, the LNC is willing to provide additional information.

Background

There is an internal LPDE dispute between two groups relating to events that appear to have occurred during the period of August 31st through October 1st of 2021. Additional subsequent actions have cemented the divide between the two groups.

The actions have caused a controversy as to who leads the state party and the ability of previous convention delegates to hold board members accountable at the next convention.

On November 21st, 2021, the LNC met to discuss the "Delaware affiliate", per the call of the special meeting made on November 8th, 2021. At this meeting, several motions were made, but no motions were passed. The LNC considered several actions, but took no action and made no determinations.

During the scheduled December 5th, 2021 meeting of the LNC, a noticed item of business concerning the Delaware affiliate came to the floor. The LNC adopted an amended version of that motion (Appendix A) by a 16-0-0 vote.

Item 1: LNC Services

1. The National Committee will continue all support activities, data sharing, and other services for and with both of the claimed Chairs of the Libertarian Party of Delaware, subject to the limitations of the law and campaign finance regulations regarding such information, and the requirements of the Non-Disclosure Agreement for access to such information;

The LNC is empowered to share data with whomever it wants, within the bounds of law, campaign finance regulations, and other pre-established terms for the sharing of such data. For instance, at its December 2021 meeting, the LNC decided to amend the policy manual to share information with the LLCC, in the same way it had previously shared information with the LNCC. In the past, the LNC has engaged in “list swapping” with other outside organizations. Sharing information with one organization does not alter the ability to share that information with other organizations.

It is important to note that the data being shared with both sets of leadership is subject to, and protected by, a non-disclosure agreement (NDA). The privacy of our members in Delaware is important to the LNC, and the NDA provides a mechanism to hold a person, or group of persons, personally liable for any abuse of the data.

The LNC has not disaffiliated LPDE, and continues to take no official position as to the rightful leadership of LPDE. Individuals on both leadership rosters may access services and data until such time as the controversy is resolved. We recognize that one is LPDE, and only seek the answer to the question, “*which group leads our one and only affiliate?*”, so as to be able to properly interface with that affiliate in the long-term.

No harm is being done by the LNC to either leadership roster. Each claimed Chair has equal access to all information (which is protected from abuse by the NDA) and services provided from the LNC to its affiliates.

Item 2: Membership “Mass Meeting”

2. The National Committee encourages a general membership meeting to be held to determine which leadership is the rightful leadership of the Libertarian Party of Delaware, with participation both open to and limited to all those who meet the criteria to be a member, under the definition of "membership" as defined in the Articles of Association and Bylaws of the Libertarian Party of Delaware as of the 2021 annual convention of the Libertarian Party of Delaware;

Because there is a controversy as to the leadership of the Delaware affiliate, there is likely no mechanism for one set of leadership or the other to authoritatively call a convention. Therefore, the LNC is encouraging, but not requiring, a Mass Meeting as defined by RONR (Appendix D). Such a meeting of the membership would have the particular purpose of resolving the particular problem of who leads the Delaware affiliate, and should, at a minimum, include all of those who were eligible and remain eligible under the rules for membership as of the 2021 annual convention; the convention at which the leadership was last elected.

Item 3. Decision of membership

3. Upon the completion of the general meeting of the membership, the National Committee shall recognize that leadership which is recognized by the body of that general meeting and, upon majority vote of the National Committee, shall consider the matter resolved and return to normal relations with the Libertarian Party of Delaware;

As the membership is the deciding body of the organization, the LNC leaves it to the membership, through a Mass Meeting (Appendix D), to determine who is the rightful leadership of their affiliate.

If the members decide to have a Mass Meeting to resolve the issue of which board to recognize as the leadership of the Delaware affiliate, the LNC will respect the desires of these members. At that time, the LNC will only share data with the leadership of LPDE as determined by the members in LPDE.

There is no abridgement of the autonomy of LPDE by the LNC. The members in Delaware can (and from the perspective of the LNC, hopefully will) decide how to resolve this controversy within their party.

Item 4. Competing mass meetings

4. If there are competing general meetings or conventions, the National Committee shall recognize the convention or general meeting of the membership with the greatest number of those who qualify as members, using the definition of "membership" as defined in the Articles of Association and Bylaws of the Libertarian Party of Delaware as of the 2021 annual convention of the Libertarian Party of Delaware;

While it is the genuine hope of the LNC that both leadership rosters could come to an agreement on one meeting – date, time, and location – this section allows for the contingency that both groups may hold separate Mass Meetings and that a fair means of resolving that conflict, outlined in advance, be presented.

As a practical matter, a meeting of five members will not carry the same weight as a meeting of 50 members. To suggest otherwise would be preposterous, but it is clearly outlined in the motion to make this crystal clear for all parties involved.

Since this was specifically called-out in the motion, it would be reasonable for the group(s) to understand the importance of verifiably credentialing and documenting who was both in attendance and qualified to participate in their event. Trying to cheat such processes would obviously be looked upon unfavorably.

Item 5. Final results

5. Upon resolution, the National Committee shall enforce the provisions of the Bylaws of the Libertarian Party, Article 5 Paragraph 1.

The LNC continues to comply with the bylaws in recognizing only one affiliate in Delaware; the Libertarian Party of Delaware.

Once the leadership team is decided by the membership of the Libertarian Party of Delaware, the name, assets, etc. of the Libertarian Party of Delaware need to be in the possession of the recognized leadership team, and Article 5 Section 1 provides for enforcement by the LNC.

Appendix A:

LNC “Delaware motion” as adopted 16-0-0 on December 5th, 2021

WHEREAS, Article 5 Paragraph 3 of the Bylaws of the Libertarian Party require that the Libertarian National Committee only recognize one state-level affiliate party in any one state;

WHEREAS, Article 5 Paragraph 5 of the Bylaws of the Libertarian Party prevents the abridgement of the autonomy of the affiliate parties;

IT IS HEREBY RESOLVED, the National Committee of the Libertarian Party takes the following actions:

1. The National Committee will continue all support activities, data sharing, and other services for and with both of the claimed chairs of the Libertarian Party of Delaware, subject to the limitations of the law and campaign finance regulations regarding such information, and the requirements of the Non-Disclosure Agreement for access to such information;
2. The National Committee encourages a general membership meeting to be held to determine which leadership is the rightful leadership of the Libertarian Party of Delaware, with participation both open to and limited to all those who meet the criteria to be a member, under the definition of "membership" as defined in the Articles of Association and Bylaws of the Libertarian Party of Delaware as of the 2021 annual convention of the Libertarian Party of Delaware;
3. Upon the completion of the general meeting of the membership, the National Committee shall recognize that leadership which is recognized by the body of that general meeting and, upon majority vote of the National Committee, shall consider the matter resolved and return to normal relations with the Libertarian Party of Delaware;
4. If there are competing general meetings or conventions, the National Committee shall recognize the convention or general meeting of the membership with the greatest number of those who qualify as members, using the definition of "membership" as defined in the Articles of Association and Bylaws of the Libertarian Party of Delaware as of the 2021 annual convention of the Libertarian Party of Delaware;
5. Upon resolution, the National Committee shall enforce the provisions of the Bylaws of the Libertarian Party, Article 5 Paragraph 1.

Appendix B: Bylaws Article 5 Section 6: Disaffiliation

ARTICLE 5: AFFILIATE PARTIES

6. The National Committee shall have the power to revoke the status of any affiliate party, for cause, by a vote of 3/4 of the entire National Committee. A motion to revoke the status of an affiliate party for cause must specify the nature of the cause for revocation. The affiliate party may challenge the revocation of its status by written appeal to the Judicial Committee within 30 days of receipt of notice of such revocation. Failure to appeal within 30 days shall confirm the revocation and bar any later challenge or appeal. The National Committee shall not revoke the status of any affiliate party within six months prior to a regular convention. The Judicial Committee shall set a date for hearing the appeal within 20 to 40 days of receipt of the appeal and shall notify all interested persons, which persons shall have the right to appear and submit evidence and argument. At the hearing the burden of persuasion shall rest upon the appellant. The Judicial Committee shall either affirm the National Committee's revocation of affiliate party status or order reinstatement of the affiliate party. The Judicial Committee shall issue its ruling within 30 days of the hearing and in no case later than 90 days prior to a regular convention. Failure of the Judicial Committee to rule within 30 days shall constitute an affirmation of the National Committee's revocation of affiliate party status except when the last day of the 30 day period falls within 90 days prior to a regular convention, in which case the Judicial Committee's non-action shall result in reinstatement of affiliate party status.

Source:

<https://www.lp.org/wp-content/uploads/2020/12/2020-Indexed-LP-Bylaws-and-Convention-Rules-w-2020-JC-Rules.pdf>

Appendix C: Bylaws Article 7 Section 12: Appealing LNC Decisions

ARTICLE 7: NATIONAL COMMITTEE

12. 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.

Source:

<https://www.lp.org/wp-content/uploads/2020/12/2020-Indexed-LP-Bylaws-and-Convention-Rules-w-2020-JC-Rules.pdf>

Appendix D: RONR on “Mass Meetings”

1:10 The Mass Meeting. The mass meeting is the simplest form of assembly in principle, although not the one most frequently encountered. A mass meeting is a meeting of an unorganized group that is announced as open to everyone (or everyone within a specified sector of the population) interested in a particular problem or purpose defined by the meeting's sponsors, and that is called with a view to appropriate action to be decided on and taken by the meeting body. A series of connected meetings making up a session may be held on such a basis. The class of persons invited might be, for example, supporters of a given political party, homeowners residing within a certain city, persons opposed to a tax increase, or any similar group. Admittance may be limited to the invited category if desired. Everyone who attends a mass meeting has the right to participate in the proceedings as a member of the assembly, upon the understanding that he is in general sympathy with the announced object of the meeting.

Source: Robert's Rules of Order, Newly Revised, 12th Edition

Note: Additional instructions on a Mass Meeting are covered in RONR Chapter XVII.