

SUMMARY PAGE OF LIBERTARIAN PARTY JUDICIAL COMMITTEE RULING  
in the matters of:  
WILL MCVAY (et. al) VS. LIBERTARIAN NATIONAL COMMITTEE  
BILL HINDS (et. al) VS. LIBERTARIAN NATIONAL COMMITTEE

**Date Issued:** February 13, 2022  
**Appellants:** Will McVay (et. al.) on behalf of the Libertarian Party of Delaware (LPDE);  
and separately Bill Hinds (et. al.) on behalf of the Libertarian Party of Delaware  
**Respondents:** Appellants are also respondents in cross-appeals;  
Libertarian National Committee (LNC)

**Background:**

- On December 9, 2021 we received a filing from Will McVay and eight others purporting to be the chair and board of the LPDE alleging that the LPDE was disaffiliated by LNC's adoption of a motion regarding Delaware on December 5, plus Region 5's election and seating of alternate Otto Dassing to the LNC.
- Separately on December 20, 2021, we received a filing from Bill Hinds and two others purporting to be the chair, vice-chair, and board member of the LPDE alleging that a sequence of LNC actions on November 21, 2021 was a disaffiliation of the LPDE as chaired by Mr. Hinds, and another motion adopted by the LNC on December 5, 2021 was a confirmation of the disaffiliation.
- There were two different individuals claiming to be the rightful chair of the LPDE due to disputed actions by LPDE board members on October 1, 2021 and November 20, 2021.
- The Judicial Committee held a hearing on January 16, 2022, continued that hearing on January 23, 2022, and subsequently considered all the arguments.
- On February 13, 2022 the Judicial Committee members voted as shown below.
- Judicial Committee members have chosen to author or co-sign the attached written statements regarding the vote.

**Votes (2 key findings and 1 ruling):**

**Motion 1**

Events in the October 1 and November 20 Delaware meetings were not valid, and thus did not change the leadership and rules of the Libertarian Party of Delaware.

**Voting Yes:** Turney, Arnold, Mattson, Ruwart

**Voting No:** Supreme

**Abstaining:** Moulton, Robinson

The motion was adopted with a 4-1 vote.

### **Motion 2**

The LNC's actions culminating in the December 5 motion constructively disaffiliated the rightful Delaware affiliate.

Voting Yes: Turney, Arnold, Supreme, Mattson, Moulton, Ruwart

Voting No: (none)

Abstaining: Robinson

The motion was adopted with a 6-0 vote.

### **Motion 3**

Thus we rule to reinstate the LP's Delaware affiliate, recognizing its officers (Mr. Hinds as chair) and other duly elected board members (including Dr. LePore and Mr. Casey) chosen by that affiliate under its properly adopted rules as they stood prior to the events of October 1.

Voting Yes: Turney, Arnold, Mattson, Ruwart

Voting No: Supreme, Moulton

Abstaining: Robinson

The motion was adopted with a 4-2 vote.

**Effect:** This ruling is self-executing to effectuate the above reinstatement.

OPINION IN TWO APPEALS OF ALLEGED CONSTRUCTIVE DISAFFILIATION  
OF THE DELAWARE AFFILIATE

Will McVay vs. Libertarian National Committee  
Bill Hinds vs. Libertarian National Committee

Opinion of Alicia Mattson voting with the majority to reinstate. Mary Ruwart and Jim Turney concurring.

*NOTE: References to Robert's Rules of Order Newly Revised (RONR) are to the 12<sup>th</sup> edition.*

**1.0 Executive Summary**

Having reviewed voluminous filings by two groups both claiming to represent the Libertarian Party of Delaware, filings by the Libertarian National Committee (LNC), numerous amici filings, the national Libertarian Party (LP) bylaws, both the articles of association and the bylaws of the Libertarian Party of Delaware (LPDE), RONR, and having conducted a hearing on the matter on January 16, 2022 which hearing was continued on January 23, 2022, the national Libertarian Party's Judicial Committee rules as follows:

To reinstate the LP's Delaware affiliate, recognizing its officers (Mr. Hinds as chair) and other duly elected board members (including Dr. LePore and Mr. Casey) chosen by that affiliate under its properly adopted rules as they stood prior to the events of October 1.

**2.0 Background**

The Judicial Committee (JC) has received two appeals on overlapping subjects regarding alleged disaffiliation of the LP's Delaware affiliate.

On December 9, 2021 we received a filing (the "McVay appeal") from Will McVay and 8 others purporting to be the chair and board of the LPDE alleging that the LPDE was disaffiliated by:

- 1) LNC's adoption of a motion regarding Delaware on December 5, 2021 to require a mass meeting of members to determine its officers, plus
- 2) Region 5's election and seating of alternate Otto Dassing to the LNC because McVay was not allowed to vote on the matter.

This filing asserts JC jurisdiction under LP Bylaws Article 8.2.a, which grants jurisdiction over "suspension of affiliate parties" as described in LP Bylaws Article 5.6. This appeal requests that the JC:

- 1) void the LNC's December 5 motion, and
- 2) void the Region 5 Alternate election or permit the Delaware affiliate to withdraw from Region 5.

On December 20, 2021, we received a filing (the "Hinds appeal") from Bill Hinds and two others purporting to be the chair, vice-chair, and board member of the LPDE alleging that the LNC's failure on November 21, 2021 to adopt a motion to recognize "the board elected at the Libertarian Party of Delaware convention of 2021" was a de facto recognition of the McVay board. The filing states that since the Hinds board is the legitimately elected board, and the McVay board is not the legitimately elected board, the LNC's failed motion was, "a constructive disaffiliation of the LPDE." The Hinds appeal

further notes that also on November 21, 2021 the LNC voted on a second motion to “[d]isaffiliate the Libertarian Party of Delaware for having two boards and the Libertarian National Committee unable to decide an appropriate board,” and this motion to disaffiliate also failed to be adopted. It then alleges the December 5, 2021 LNC motion (generally to require a mass meeting to determine LPDE’s officers) served to confirm the constructive disaffiliation of LPDE caused by LNC’s failure to adopt its November 21 motion (to recognize the Hinds officers).

The Hinds appeal cites LP Bylaws Article 5.1-6 for jurisdiction, as it regards the revocation of an affiliate’s status. The appeal requests as relief that the JC “direct the LNC to recognize the LPDE affiliate led by Bill Hinds, the duly elected Chair, and repudiate its constructive disaffiliation of same.”

In general, the LNC’s adopted December 5 motion (to require a mass meeting to determine LPDE’s officers) includes a directive to continue sharing affiliate data with both the McVay board and the Hinds board, encourages those who were LPDE members as of the date of the 2021 LPDE state convention to hold a meeting to determine the rightful leadership of the LPDE and establishes that the LNC shall recognize that outcome, or alternatively if competing meetings are held the LNC shall recognize the outcome of whichever meeting had the greatest number of LPDE members.

### **3.0 Jurisdiction**

The Judicial Committee has jurisdiction over revocation of affiliate status under LP Bylaws Article 5.6 and Article 8.2.a as cited by the parties. LP Bylaws Article 5.3 establishes that, “There shall be no more than one state-level affiliate party in any one state.” LP Bylaws Article 5.2 prescribes how an affiliate relationship is established, and it requires submission of a petition for affiliation followed by the LNC granting the request. No group has recently submitted such a petition, much less has the LNC granted the request of such a petition. Therefore, the LNC has not acted to create a second affiliate in Delaware. Nothing in that bylaw suggests that providing data to an organization is alone sufficient to make them an LP affiliate. The LNC at times provides data to non-affiliate entities, such as our Presidential campaigns.

There is only one affiliate in Delaware. What is disputed is the identity of the rightful officers of that affiliate. Under LP Bylaws Article 5.6 (underline added), “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.” Only the rightful affiliate has standing to appeal under this article. Therefore, no more than one of the appeals submitted to us could possibly be accepted under Articles 5.6 and 8.2.a. To determine who has standing to file such an appeal, the JC needs to determine who are the rightful LPDE officers, a task that the LNC failed to do.

What is an affiliate? General dictionary definitions of the noun “affiliate” are typically about being a branch or subsidiary of a larger organization. Given the construct of our bylaws, we use it in a way more similar to the verb form “to affiliate,” which is about creating a relationship or association between two entities. An LP affiliate is an organization that has established a two-way relationship with the national party, each having duties to the other. The affiliated organization has many variables which object-oriented language programmers might call “properties.” It usually has members, bylaws, assets, a board, and officers. The relationship involves certain LP bylaws-prescribed behaviors between the national LP and the affiliate. (The national LP provides certain information to affiliate chairs. The national LP supports activities of affiliates. The affiliates send delegates to the national conventions. Etcetera.) As will be itemized below, the LP bylaws do prescribe various interactions with the affiliate

chairs, and the chairs chosen under the affiliate's rules are the most obvious representatives of the affiliates.

When the bylaws give the JC jurisdiction with a phrase such as, "The affiliate party may challenge the revocation of its status..." then to apply this bylaw the JC must of necessity be able to determine whether or not the appellant is legitimately representing the affiliate. The JC must first determine whether Mr. McVay or Mr. Hinds is the LPDE chair in order to determine which of the appeals to accept and which to dismiss for lack of standing. The bylaw would be pointless if the JC were precluded from discerning this reality. If Xi Jinping contacted the JC claiming to represent a wrongfully disaffiliated LP affiliate, no one would disagree that the JC should not accept the case, as he clearly does not represent any of our affiliates.

### **3.1 Range of Authorized Remedies**

Regardless of which of the two appeals the JC accepts, both are framed as an appeal of a constructive revocation of affiliate status. If a disaffiliation occurred, the only options for the JC under LP Bylaws Article 5.6 are to either affirm the revocation, or to reinstate the affiliate. We are not authorized to fashion a different remedy.

The McVay appeal under LP Bylaws Articles 5.6 and 8.2.a requests that we 1) void the LNC's December 5 motion, and 2) either void the Region 5 Alternate election or permit the Delaware affiliate to withdraw from Region 5.

Voiding LNC decisions is only an option under LP Bylaws Article 7.12 and 8.2.d, but that requires an, "appeal by ten percent of the delegates credentialed at the most recent regular convention or one percent of the Party sustaining members," which was not done here. Rather, the McVay petition was submitted by nine individuals purporting to be the LPDE board. It is not permissible to use the easier appeal path of Article 5.6 regarding alleged disaffiliation and then use it as a shoehorn to address issues that can only be raised under an Article 7.12 appeal.

The JC's jurisdiction is limited to items listed in LP Bylaws Article 8.2. Nothing in the LP Bylaws permits the JC to issue a ruling voiding an election of a regional alternate or altering the regional makeup, as requested in the McVay appeal. If the LNC's December 5 motion (requiring a mass meeting to determine LPDE's officers) is determined to be a disaffiliation, then the only action within our power for an appeal under LP Bylaws Articles 5.6 and 8.2.a is to affirm the disaffiliation or reinstate the status of an affiliate. The LNC's credentialing decision to seat an allegedly improperly elected region rep is potentially appealable, but it would require following the procedure in LP Bylaws Article 7.12, not merely a request of nine individuals.

The Hinds appeal under LP Bylaws Article 5.6 requests that the JC "direct the LNC to recognize the LPDE affiliate led by Bill Hinds, the duly elected Chair, and repudiate its constructive disaffiliation of same." LP Bylaws Article 8.2 grants the JC no jurisdiction to direct the LNC to repudiate its past actions, or even to "direct" the LNC to recognize the LPDE affiliate led by Bill Hinds. The only action within our power (for an appeal under LP Bylaws Articles 5.6 and 8.2.a) is to affirm disaffiliation or reinstate the status of an affiliate -- if a disaffiliation has occurred. It is the ruling of the JC that would effectuate a reinstatement without a need for further motions from the LNC. In other words, its decision to reinstate is self-executing.

#### **4.0 Standing**

The only way for the JC to determine whether Mr. Hinds or Mr. McVay is the rightful LPDE chair without violating the affiliate's autonomy (their right of self-rule) is to apply the LPDE's own articles and bylaws to the dispute, which we do below. This dispute arose due to events on October 1, 2021 to purportedly hold a board meeting and amend LPDE bylaws to alter the way in which board members can be removed. Those actions led to the disputed replacement of board members (Mr. Hinds, chair; Dr. LePore, vice chair; and Mr. Casey, New Castle County representative) and substantial restructuring of the organization and its governing documents.

#### **4.1 Notice for October 1 Bylaw Amendment**

As of October 1, 2021 LPDE Bylaw 5 provided that:

*"These By-Laws may be amended in either of two ways:*

- A. A simple majority vote of members present (quorum required) at a meeting of the State Board as long as notice of proposed changes was made at least 30 days in advance.*
- B. A simple majority vote of members present at a State Convention as long as notice of proposed changes was made at least 30 days in advance."*

Even for amendments by the board, the bylaws required notice of the proposed changes at least 30 days in advance.

As of the date in question, LPDE Article of Association X provided that (underline added),

*"Many actions described in these Articles of Association and the accompanying By-Laws require notice of that pending action be provided to members. Any one of the following methods shall constitute proper notice:*

- 1. Posting on the LPD Facebook page*
- 2. Posting to the LPD Facebook group*
- 3. Posting on the LPD webpage"*

Even within the language of this article authorizing ways in which members could be notified, the underlined phrase "be provided to members" acknowledges the inherent intent of requiring notice, that members will likely receive it.

RONR advocates that previous notice for bylaw amendments ought to be required by the bylaws, and notice is better understood in RONR's explanation of why notice ought to be required. It's why there is a concept of "scope of notice" as the passage in RONR 57:11 explains (underline added):

*"If the bylaws require previous notice for their amendment (as they should), or if they do not but notice has been given and a majority of the entire membership is not present, no amendment to a bylaw amendment is in order that increases the modification of the article or provision to be amended (see 35:2(6)). This restriction prevents members from proposing a slight change and then taking advantage of absent members by moving a greater one as an amendment to the amendment. Thus, if the bylaws place the annual dues of members at \$10 and an amendment is pending to strike out 10 and insert 25, an amendment to change the 25 to any number between 10 and 25 would be in order, but an amendment to change the number to less than 10 or greater*

*than 25 would not be in order, even with unanimous consent. Had notice been given that it was proposed to increase the dues to more than \$25 or to reduce them below \$10, members who opposed such a change might have attended the meeting to vote against the amendment.*

Notice is a communication intended to be received by members, informing them about the range of options to be considered, and thus impacting the members' decisions whether to exercise their fundamental right to attend meetings to either support or oppose proposed actions. In the unique case of LPDE, after receiving notice the affiliate's three county organizations could have potentially acted to change their representation on the state board to prevent an objectionable amendment from being adopted by the board.

McVay asserts that notice of the October 1 proposed change was given by virtue of a vague August 31 post on the LPDE Facebook group, a post that did not even at minimum say it was intended to constitute notice. It merely said, "Change Bylaw 4?:" Especially given that the Facebook group is used for broad general discussion, it's important to expressly say that it is notice so as to distinguish that post from one merely seeking feedback on a draft idea. This vague phrasing in such a mixed-use forum should not be considered as notice having been properly given.

When the bylaws require notice, it is understood that this precludes engaging in acts intended to thwart its receipt by members. For example, if the bylaws required a mailed notice, the bylaws wouldn't also have to say that hijacking the mail carrier's truck after placing the notices in the mailbox is prohibited. The bylaws don't have to say that a hypothetical white text on a white background isn't valid notice. Requiring that notice be given inherently implies that one cannot take actions to intentionally prevent members from receiving the notice, and that is what undeniably, admittedly happened in this case. An admittedly orchestrated meme dump happened immediately after the Facebook post was made so as to bury it from view. Comments on the post were turned off (initially by Mr. McVay himself) to further make it less visible in the Facebook algorithms. Further, there were none of the customary hashtags applied to the post to identify it as being notice.

If action is taken to prevent previous notice from having its effect, no proper notice was given. Observers of the Facebook page would mostly never even see the post, and if they did, would not likely think it constituted notice. No proper notice was given for the purported October 1 bylaw amendment. That amendment proposed lowering the bar for removing members of the ten-member State Board. Instead of requiring a 4/5 vote of the State Board (provided it is later affirmed by a majority vote at the next Convention), the language purportedly adopted on October 1 allows removal by a vote of two of the three County Chairs and dispenses with the required affirmation vote at the Convention. Effectively, the amendment empowers two people to remove any and all members of the board.

LPDE Bylaw 3.B adopts RONR as its parliamentary authority. Under RONR, without proper notice, the purported October 1 adoption of the bylaw amendment was action taken in violation of a rule in the bylaws protecting absentees. (See RONR 23:6 especially exception (e), also 23:9, 39:5). A requirement for previous notice of a bylaw amendment is a rule protecting absentees (RONR 25:10). RONR 23:9 provides that a finding of an RONR 23:6(e) violation means the action must be declared null and void.

#### **4.2 Actions Relying on Purported October 1 Bylaw Amendment**

Moments after the purported bylaw amendment on October 1, two LPDE County Chairs while serving on the State Board (rather than at a noticed meeting of County Chairs) relied on the invalid bylaw

amendment to purportedly remove three absent board members, two of whom were officers, and without any charge of misconduct as contemplated by LPDE Bylaw 4.

As explained above, the bylaw amendment was not properly adopted, is null and void, and the bylaws at the time would instead have required accusation of misconduct plus “a vote of 4/5 of the members of the State Board confirmed at the next Convention by a majority vote to remain in effect.” Thus Mr. Hinds, Dr. LePore, and Mr. Casey were not actually removed from their positions on October 1, leaving no path to appoint Mr. McVay as chair, and there were no vacancies for the McVay group to backfill.

After the October 1 coup, the McVay group (with Mr. McVay as its purported new chair) did not represent a board acting under the LPDE articles and bylaws. The rogue board proceeded to backfill vacant positions with themselves and their allies, disaffiliate the New Castle County affiliate chaired by Mr. Casey and reconstitute a different New Castle County affiliate, drastically amend the bylaws regarding membership such that only individuals approved by the State Board could become LPDE members, and take full control of the function of the county affiliates. All this was done without allowing participation by properly elected board members and with the participation of improperly back-filled board members. The culmination of these steps accomplished the purpose McVay and his cohorts sought: to eliminate and ban all opposition, and vest full control of the party in themselves.

#### **4.3 Alleged Do-Over Meeting on November 20**

For whatever reason, the now-rogue McVay group purported to offer the three allegedly removed board members (Hinds, LePore and Casey) an opportunity to re-do the October 1 bylaw amendment vote at the 4<sup>th</sup> quarter regular board meeting on November 20, with notice, but this time with a different proposed bylaw amendment that would eliminate any requirement that removal was only for the board members “accused of misconduct” and instead proposing that removal could be accomplished, “By a majority vote of all current State Board members on a motion to remove.”

An actual do-over vote would have been a full reset to the conditions prior to October 1 in which Mr. Hinds was recognized as the chair, the articles and bylaws were unaltered from that date, and the New Castle affiliate was represented by Mr. Casey. The draft minutes provided by McVay make clear that is not what happened. The initial attendance lists Mr. McVay as the chair and lists as board members several who were not board members as of October 1. In other words, this was not actually a meeting of the LPDE board.

A review of the video and draft minutes of the 4<sup>th</sup> quarter regular meeting on November 20 makes clear that it was a farce.

- LPDE Article of Association IV required that “All votes conducted at regular meetings shall be by roll call.” The video reveals that the votes were not conducted by roll call. Instead Mr. McVay rapidly gavelled through (see RONR 43:7 which says this is not legitimate parliamentary procedure). Mr. McVay:
  - often gave no real opportunity for debate
  - often did not ask for both the aye and nay votes
  - very rapidly conducted voice votes or show-of-hand votes rather than the article-required roll call votes

Voting in this manner was a violation of the LPDE articles.

- The draft minutes inaccurately portray that roll call votes were taken, though the video shows they were not. Without the required roll call votes, the illegitimate process, and with the draft

minutes demonstrated to be factually inaccurate portrayals of the events of the day, there's no reason to just trust the accuracy of those alleged vote results in the minutes, or that those in the purportedly back-filled board member positions did actually abstain in the votes and thus did not impact the outcome. RONR 23:8 provides a remedy that if there is any possibility that improper votes affected the outcome, the result of the vote must be declared invalid.

- The draft minutes list the individuals who had allegedly back-filled board positions and had taken the county representation positions in the rebuilt New Castle affiliate as “abstaining” from various votes. This implies they were eligible to cast votes, but they chose not to. These individuals were not on the board on October 1.
- The draft minutes simultaneously list the allegedly-removed members as also having been eligible to participate, but they were merely absent.

This was Schrödinger's meeting, where some clearly not on the board as of October 1 and others who clearly were, were treated as simultaneously being on the board and off the board. There were 12 pseudo-members of the 10-member board. That is not a do-over of the October 1 meeting, its unreliable vote results are null and void, and thus cannot have cured the flaws of October 1.

Further, the 4<sup>th</sup> quarter meeting purported “to ratify all actions taken by the State Board since 10/1.” Even if this meeting had been properly conducted, RONR 10:55 makes clear that a motion to ratify bylaw violations is prohibited.

Mr. McVay was never properly chosen as the chair of the LPDE affiliate under the LPDE articles and bylaws, thus his appeal purporting to be the LPDE chair must be rejected for lack of standing, as he does not represent the LPDE affiliate.

### **5.0 Hinds Appeal**

Neither of the appellants disputes that Hinds and LePore were duly elected at the LPDE convention and were officers at the time of the disputed actions.

The Hinds appeal primarily alleges that the LNC's failure on November 21, 2021 to adopt a motion to recognize “the board elected at the Libertarian Party of Delaware convention of 2021” was a de facto recognition of the McVay board, and since the McVay board is not the legitimately elected board, the LNC's failed motion was, “a constructive disaffiliation of the LPDE.”

It is not correct in the parliamentary sense to deduce that failing to adopt a motion to recognize the board elected at the Libertarian Party of Delaware convention of 2021 is the equivalent of having adopted a motion to recognize the McVay board. See RONR 10:12:

*“In this connection, it should be noted that voting down a motion or resolution that would express a particular opinion is not the same as adopting a motion expressing the opposite opinion, since—if the motion is voted down—neither opinion has been expressed. A member may be in complete agreement with the views contained in such a resolution yet feel that his organization should not speak out on the matter, and he might therefore vote against the resolution.”*

Perhaps LNC members believe Mr. Hinds is the rightful LPDE chair, but that it's not a question within its power to address. Perhaps the LNC vote just meant “not at this time.” Perhaps they intended to

resolve the dispute in some other manner, such as the December 5 motion. All we can deduce is that the LNC did not at that time on November 21 make a decision regarding who to recognize as the LPDE officers/board, and the circumstances of the December 5 motion do suggest that the LNC had an intention to resolve the question in some other manner.

We know that another LNC motion to disaffiliate the LPDE also failed to be adopted on November 21. The LNC expressly voted against disaffiliation of LPDE at that time. The nature of the subsequent December 5 motion clearly shows that the LNC unanimously believed they still had an affiliate in Delaware, but there is a dispute over which officers the LNC should recognize as representatives of that affiliate.

Must the LNC make any decision when it is disputed who the key affiliate officers are, particularly the office of chair? The LP Bylaws say yes, and do so in numerous places. Appendix A to this opinion is a listing of at least 15 provisions in the LP Bylaws that require knowing the identity of the state affiliate, certain of its officers, and its governing documents. An ability to determine who represents an affiliate and who are its officers is baked into the very nature of these bylaw provisions.

Just as JC jurisdiction for a situation in which, “The affiliate party may challenge the revocation of its status...” necessarily requires the JC to identify whether the appealing party is actually the affiliate, the Appendix A bylaw provisions establishing LNC obligations for affiliate interaction necessarily authorize the LNC to identify the organization it has affiliated and the officers of the affiliate with whom they must interact. Otherwise the bylaws would be absurd. RONR 56:68(2) provides that when interpretation is necessary, a not-absurd interpretation option must be chosen over one which “renders absurd another bylaw provision.” The Appendix A references do not have any clauses which say “unless there is a dispute over who the affiliate officers are.” A decision must be made in order to faithfully comply with these bylaw provisions.

This need to recognize affiliate officers is commonly accepted during times when there is no affiliate dispute in play. To facilitate ordinary party activities, LP staff keeps a list of contact information for affiliate state chairs. LNC officers and staff routinely use the list to contact affiliates about various party functions. If Xi Jinping were to email the LNC asserting to be the chair of the LPDE, should the LNC ignore all the warning signs surrounding the assertion and treat it as fact, or should the LNC reject the invalid claim? A mere assertion is not sufficient to make one the rightful affiliate chair.

Now that there is a dispute in Delaware, many misread LP Bylaws Article 5.5, which says (underline added):

“The autonomy of the affiliate and sub-affiliate parties shall not be abridged by the National Committee or any other committee of the Party, except as provided by these bylaws.”

That passage does not end after, “The autonomy of the affiliate and sub-affiliate parties shall not be abridged by the National Committee or any other committee of the Party.” There’s another clause which impacts the meaning, “except as provided by these bylaws.”

The LNC respecting an affiliate’s rules and elections by working with the rightful affiliate chair (as opposed to someone who is not the rightful chair) *is* respecting the affiliate’s autonomy, not abridging it. The LP bylaws provide at least 15 requirements in Appendix A, including duties to interact with the affiliate and its officers, which mean that even IF applying the affiliate’s rules to determine its chair’s

identity is perceived by some as an abridging of its autonomy, the LNC and other Party committees are *required* to do so in order to abide by these bylaws. The LNC is actually obligated by the bylaws to know who certain affiliate officers are, and if disputes arise, affiliate autonomy is preserved so long as the LNC accurately applies the affiliate's own rules to determine with whom the LNC will work. It would violate affiliate autonomy for the LNC to substitute its own preferences for those of the affiliate and not let the affiliate's own rules answer the question.

LP Bylaws Article 5.6 requires that disaffiliation may only happen with a specified supermajority of the LNC adopting a motion to do so. That inherently means that the LNC is not allowed to effectuate a disaffiliation in some other way, such as refusing to recognize the actual affiliate officers and instead treating others as though they were the affiliate officers. This would also be a violation of numerous provisions listed in Appendix A.

At what point does failure to resolve a disputed-officer problem eventually become constructive disaffiliation? Certainly, an LNC needs a reasonable time to review the situation and decide, but just sitting on their hands over time can result in constructive disaffiliation. They've had more than two months to evaluate this situation. They've adopted the December 5 motion which says that they "shall" later recognize a set of officers based on the outcome of one or more mass meetings in Delaware...which meetings seem unlikely to ever happen, given the objections voiced by both Hinds and McVay. The December 5 motion is not a clear path to fulfilling the LNC's obligation to recognize only the rightful officers, but instead actually opens the possibility of recognizing Mr. McVay as the chair, though he is not the rightful chair under the LPDE articles and bylaws.

LP Bylaw 5.6 establishes that, "The National Committee shall not revoke the status of any affiliate party within six months prior to a regular convention." Why might that time frame matter? One reality is that its proximity to convention increases the chances of gamesmanship by the LNC which could impact political outcomes at the convention. Another reality is that time frame is when affiliates have state conventions to select delegates to the national convention, the credentials committee is performing its function, delegates are making hotel reservations and other (sometimes not refundable) travel plans. On the whole, there needs to be some certainty about the affiliates in this time period.

We crossed into the six-months-prior territory between the November 21 LNC votes and the December 5 LNC votes. We're now even closer to the date of the national convention, and there is still not yet resolution.

### **6.0 Ruling**

Given the bylaw obligations to interact with the actual affiliate and the timing concerns relative to the national convention, the JC rules that the combined circumstances of the LNC's failure to act on November 21, plus the LNC's December 5 motion that opened the door to recognizing those who are not the rightful officers, collectively serve as a constructive disaffiliation of the LPDE affiliate as chaired by Mr. Hinds. Therefore, we rule to reinstate the LP's Delaware affiliate, recognizing its officers (Mr. Hinds as chair) and other duly elected board members (including Dr. LePore and Mr. Casey) chosen by that affiliate under its properly adopted rules as they stood prior to the events of October 1.

## **7.0 Dissenting Opinion**

The dissenting opinion argues the Judicial Committee must apply the “precedent” of the Wagner vs. LNC (2011) case, and therefore urges recognition of Mr. McVay as the chair of the LPDE. The opinion correctly rejects the challenge to the LNC region 5 alternate election of Otto Dassing, but only because of a timing issue rather than the more foundational lack of subject matter jurisdiction under the LP bylaws. Finally the dissenting opinion would void the LNC resolution of December 5, 2021 as being in violation of the bylaws. However as noted above, no appeal was filed which meets the bylaw standard to allow the JC to consider voiding an LNC decision.

The argument that we are bound by a 2011 JC opinion regarding a dispute about who were the rightful officers of the LP’s affiliate in Oregon is flawed in numerous ways.

The JC must apply the national bylaws to the instant case in properly appealed disputes. There is no bylaw which says past JC rulings on similar-fact-pattern cases constitute binding precedent, such that a mistake made by a previous JC would compel a later JC to live with the same mistake. That is not a rule of our organization, thus it cannot compel us. Even if we were bound by past precedent, the 2011 JC opinion was specifically rescinded by a later JC opinion in 2015 (see attached). Moreover, even in government courts, the doctrine of precedent only requires lower courts to take higher court rulings into account.

None of the LP bylaws regarding affiliate creation, interaction, or even disaffiliation base anything on the question of who possesses various assets.

The dissenting opinion argues that because the job of the JC would be easier if an easily-applied, bright-line rule existed, that would be better than the messier reality of this organization engaging in self-governance. A desire for efficiency is not a justification for a JC to ignore scope limitations given in the bylaws and create new rules not approved by delegates.

## APPENDIX A

### **Bylaws Provisions and Practical Party Management Tasks that Require Knowledge of Affiliate Parties, Their Officers, and Their Bylaws**

Following is a list of numerous matters of mandatory Libertarian Party Bylaws compliance for which it is imperative that the LNC (and at times other committees) be able to identify which organization is our affiliate in a state, who are the rightful officers of each of our affiliates, and what their bylaws are.

1) The Party purposes in Article 2 include chartering affiliate parties, promoting affiliate activities, and supporting affiliate party candidates for public office. If two groups are each claiming to be the officers of the affiliate, and perhaps they have each nominated different candidate slates, which of the activities and candidates should the LNC support?

2) Libertarian Party Bylaws Article 5.3 states:

*There shall be no more than one state-level affiliate party in any one state. 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. A state-level affiliate party may charter sub-affiliate parties within the state, which will entitle such sub-affiliates to use the name "Libertarian Party."*

If two groups are each claiming to be the officers of the affiliate, and each of the groups has chartered a different set of sub-affiliate parties within the state, which group of sub-level affiliates is entitled to use the name "Libertarian Party"?

3) Libertarian Party Bylaws Article 5.2 designate the LNC as the body that grants affiliate status to those organizations "which adopt the Statement of Principles and file a copy of their Constitution and/or Bylaws with the Party Secretary." Common sense argues that this power necessarily includes the authority to later identify who are the officers representing the affiliate to which the LNC has granted affiliate status.

4) Libertarian Party Bylaws Article 5.1 restricts that the name "Libertarian Party" may only be used by the Party or by an organization to which the Party has granted affiliate status. It is necessary to be able to identify the officers of an affiliate to know who is authorized to use the name "Libertarian Party".

5) Libertarian Party Bylaws Article 5.4 states, "No affiliate party shall endorse any candidate who is a member of another party for public office in any partisan election. No affiliate party shall take any action inconsistent with the Statement of Principles or these Bylaws." A violation of these prohibitions could potentially constitute cause for which the LNC could later decide to disaffiliate an existing affiliate. The LNC must be able to

determine whether the actions in question were taken by those in positions of authority within the affiliate, or by others not representing the affiliate.

6) Libertarian Party Bylaws Article 7.1 states that the LNC has *“control and management of all the affairs, properties and funds of the Party consistent with these Bylaws”*. One of the assets of the Party managed by the LNC is a trademark on the name “Libertarian Party”. To protect that trademark, the LNC must know who are the officers of our affiliates, thus who is entitled to use the name.

7) For the conduct of LNC business, the LNC must know who the legitimate LNC members are. Libertarian Party Bylaws Article 7.4 establishes that an LNC member shall not be the candidate of any party except the Party or an affiliate. The LNC must know who the officers of the affiliate are to know who to trust to tell us who are the candidates of the affiliate so we can know if the LNC members are in compliance with this bylaw.

8) For the conduct of LNC business, the LNC must know who the legitimate LNC members are. Libertarian Party Bylaws Article 7.8 establishes scenarios wherein state chairs can remove a regional representative from the LNC. If the removal of a regional representative to the LNC was conducted by the legitimate state chairs, the LNC should no longer permit the removed representative to participate in LNC business. If the “removal” was conducted by people who are not the legitimate state chairs, the LNC should allow the representative to continue to participate in LNC business.

9) Libertarian Party Bylaws Article 10.3 through Article 10.6 set eligibility requirements for national convention delegates, dependent on action of the affiliate party and its officers.

10) How can the Libertarian Party Secretary comply with Libertarian Party Bylaws Article 10.4.b and send delegation totals to the chair of each affiliate without knowing who the chair of each affiliate is?

11) How can the Credentials Committee know from whom to accept affiliate delegate listings in accordance with 10.4.c and 10.4.d without knowing which officers hold positions in the affiliate and thus are entitled to submit delegate listings?

12) How can alternate substitution at national conventions be properly permitted in compliance with Article 10.6 if the Credentials Committee cannot determine what the affiliate’s current rules are regarding substitution?

13) Libertarian Party Bylaws Article 11.3 mandates that the Platform Committee be composed partially of representatives from various affiliates. The identity of the officers of the affiliate must be determined to know whose word to accept regarding the identity of that affiliate’s committee representatives.

14) Libertarian Party Bylaws Article 11.4 mandates that the Credentials Committee be composed partially of representatives from the top-five affiliates. The identity of the officers of the affiliate must be determined to know whose word to accept regarding the identity of that affiliate's committee representative.

15) Libertarian Party Bylaws Article 14.2 regarding eligibility requirements for presidential candidates necessitates knowing whether an individual agreed to be placed on a nomination petition of a state affiliate, or whether it was the petition of some other group.

In practice, all of these above factors make it imperative that the LNC be able to identify the officers of the entity to which it has granted affiliate status to facilitate compliance with our bylaws in the most fundamental inner workings of the party.

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Besides matters of mandatory bylaws compliance, the LNC in its role of managing the affairs of the party employs staff and directs them to provide various services and benefits to the Libertarian Party state affiliates. These are offered to serve the purposes of the party. Among these services are:

1) LNC Policy Manual Section 2.08.3 restricts potential use of Party assets to provide information or services for candidates contingent upon whether "the service or candidate has been approved by the state chair".

2) LNC Policy Manual Section 3.02.2 sets conditions under which privileged data will be shared with affiliate organizations.

3) The LNC frequently supports ballot access drives in cooperation with our affiliates. Without knowing who the legitimate officers of an affiliate are, how can the LNC determine with whom they should work?

4) Staff members employed by the LNC place links from our website at [www.lp.org](http://www.lp.org) to those groups which we recognize as our affiliates. Our staff depends on the word of officers of the affiliate to tell us which website belongs to their affiliate.

5) Staff members employed by the LNC rely on the word of the chairs of our state affiliates to determine which local candidates should be listed for each state on the [www.lp.org](http://www.lp.org) website.

Though this is not an all-inclusive list, it is sufficient to demonstrate the necessity and obligation of the LNC to reasonably identify who are the officers of the organizations chartered as our affiliates.

**APPENDIX B**  
**2015 Judicial Committee Ruling (excerpt)**

In the related cases of  
Wes Wagner vs. the Libertarian National Committee  
and  
Ian Epstein vs. the Libertarian National Committee

On July 23, 2015, we, the Judicial Committee of the national Libertarian Party, received from Ian Epstein an appeal of an alleged constructive disaffiliation of the Libertarian Party of Oregon. Before considering the case of Ian Epstein vs. the Libertarian National Committee, we look to our previous ruling in Wes Wagner vs. the Libertarian National Committee.

On August 23, 2011, we heard the case of Wes Wagner vs. the Libertarian National Committee. On August 25, 2011, we issued a ruling in that case. According to Article 6.6 of our bylaws, the last day on which we could have issued a ruling was September 22, 2011, 30 days after our hearing.<sup>i</sup> On September 23, 2011, we amended that ruling, pursuant to the power of every committee to amend or rescind something previously adopted.<sup>ii</sup>

Our ruling of 2011, both as originally adopted (“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.”) and as amended (“that the LNC must by default recognize the affiliate representatives that are currently recognized by the affiliate’s secretary of state”), suffers from a number of defects that have since become apparent:

1. By subjugating our affiliates to the whims of government bureaucrats, our ruling of 2011 conflicts with the Statement of Principles of the Libertarian Party by bowing to the cult of the omnipotent state.
2. Other than Judicial Committee rules of procedure, the Judicial Committee has no power to create new rules governing the Libertarian Party. In other words, we have no power to legislate from the bench. Article 18 of our bylaws<sup>iii</sup> reserves to the delegates assembled in convention the power to establish rules governing the Libertarian Party. However, we arrogated power by concocting a new rule allowing the secretary of state to determine the officers of our affiliates, a rule not found in our bylaws, and then used this concocted rule rather than our bylaws as the basis of our ruling in Wes Wagner vs the Libertarian National Committee.
3. In Wes Wagner vs. the Libertarian National Committee, we set a dangerous precedent that an outgoing affiliate party chair who was not re-elected could cling to power by lying to the secretary of state.
4. In Wes Wagner vs. the Libertarian National Committee, by granting the secretary of state rather than the members of each affiliate the power to determine the officers and bylaws of each affiliate, we violated Article 6.5 of our bylaws<sup>iv</sup> and abridged the autonomy of all our affiliate parties.
5. A logical consequence of our ruling in Wes Wagner vs. the Libertarian National Committee is that the Libertarian National Committee is enjoined from recognizing affiliate parties in more than a dozen states in which the secretary of state does not recognize our affiliate as a political party.
6. Another logical consequence of our ruling in Wes Wagner vs. the Libertarian National Committee is that in cases where one group has adopted our Statement of Principles and another group has not but is recognized by the secretary of state, the LNC is required to recognize the entity not in compliance with Article 6.2 of our bylaws.<sup>v</sup>

**APPENDIX B**

**2015 Judicial Committee Ruling (excerpt)**

7. *Wes Wagner vs. the Libertarian National Committee* was an appeal of an alleged disaffiliation pursuant to Article 6.6 which only allows the Judicial Committee to “either affirm the National Committee’s revocation of affiliation party status or order reinstatement of the affiliate party.” Our bylaws do not give us the power to decide such an appeal any other way. We exceeded our authority by deciding the question using a concocted rule outside these two options provided for by our bylaws.
8. We decided *Wes Wagner vs. the Libertarian National Committee* by voiding a decision of the LNC. “... the action of the Libertarian National Committee and its Executive Committee was void, ...” The authority to void a decision of the Libertarian National Committee is granted to us by Article 8.12 of our bylaws, but only upon the “appeal by ten percent of the delegates credentialed at the most recent Regular Convention or one percent of the Party sustaining members.” We find no evidence of an appeal by either.
9. The appellant in *Wes Wagner vs. the Libertarian National Committee* (*Wes Wagner*) did not represent an organization that had its affiliate status revoked. Accordingly, the Judicial Committee had no subject matter jurisdiction, per Article 6.6 and Article 9.2.a of our Bylaws. Therefore, our August 25, 2011 ruling in the case of *Wes Wagner vs. the Libertarian National Committee*, and as amended on September 23, 2011, is hereby rescinded.

Rescinding our ruling in *Wes Wagner vs. the Libertarian National Committee* leaves standing the 2011 decisions of the Libertarian National Committee and its Executive Committee concerning the Libertarian Party of Oregon. Those decisions found<sup>vi</sup> that on May 21, 2011, Tim Reeves was properly elected Chairperson of the Libertarian Party of Oregon in accordance with the Constitution and Bylaws of the Libertarian Party of Oregon then in effect.<sup>vii</sup> Therefore, common sense would indicate that any process that respects the Bylaws of the Libertarian Party of Oregon (the March 2009 Bylaws until March 9, 2013 and the March 2013 Bylaws thereafter) should produce a legitimate successor to Tim Reeves as Chairperson.

Additionally, having rescinded *Wes Wagner vs. the Libertarian National Committee*, *Ian Epstein vs. the Libertarian National Committee* becomes moot. Accordingly, *Ian Epstein vs. the Libertarian National Committee* is hereby dismissed without prejudice.

September 13, 2015

# William McVay vs Libertarian National Committee

## Bill Hinds vs. Libertarian National Committee

By Mary J. Ruwart, Judicial Committee Chair with Chuck Moulton concurring with Section 3.

### 1. Does Recognizing a Particular State's Leadership Over Another Constitute Interference with an Affiliate?

Throughout the hearing for this case, a great deal of emphasis was placed on the inability of the LNC to interfere in the affairs of the affiliate. LP Bylaws Article 5.5 states: "The autonomy of the affiliate and sub-affiliate parties shall not be abridged by the National Committee or any other committee of the Party, except as provided by these bylaws" (emphasis mine). This has been translated by many as "the LNC cannot choose between the two leadership groups claiming to be in the rightful one in Delaware." This is not an accurate interpretation of our bylaws, as both the Moulton and Mattson opinions indicate.

For example, let's assume that a small affiliate experienced a quiet takeover by members of the Communist Party disguising themselves as Libertarians. After election to a majority of the governing board, the Communists reveal their true allegiance and put out a great deal of anti-freedom literature under the Libertarian Party name. The new board controls, as most affiliate boards do, the affiliate's social media, checking account, and that state's ballot access. Would the LNC be powerless and need to rely on other Libertarians in that affiliate to stop the interlopers?

According to the opinions of both Mattson and Moulton, the answer is no. The Moulton opinion claims that in the case of a "bad actor" or hostile takeover (e.g., by another political party), the proper course is to disaffiliate the state party with "bad" leadership and re-affiliate with a better one.

The Mattson opinion claims that no disaffiliation is necessary when the affiliate's bylaws have been egregiously flouted. In such a case, the LNC can presumably affirm the leadership that is duly-elected as per the state party's own bylaws. In this particular case, the JC finds that an improper constructive disaffiliation did occur so we are reinstating the appropriate leadership.

Both opinions support the premise that our bylaws do permit the LNC some leeway in choosing the leadership of their affiliate in order to prevent hostile takeovers and "bad actors" in leadership positions. Earlier Judicial Committees, as detailed in the Moulton opinion, have rendered their opinions and affirmed leadership in particular cases. An affiliation must, after all, be mutual. A state party cannot force the LNC to affiliate, continue to affiliate, or re-affiliate with it.

It's important for the membership to recognize that both the LNC and JC can affirm the leadership of their affiliate for justifiable reasons, some of which have been stated above. Throughout our hearing and in some of the amicus briefs that the JC received, we heard statements to the contrary. Such opinions are inconsistent with the LP Bylaws, as detailed by the Mattson opinion. The JC hopes that our findings and explanations will help all

parties accept the Hinds leadership and move on. Otherwise, the dispute will continue indefinitely, absorbing a good deal of resources that might otherwise be targeted to our true enemy, the State.

Regardless, the majority opinion to reinstate the Hinds group should guide the LNC in the contact information that it puts on the lp.org website, whom the CRM data is shared with, and which leadership group it should acknowledge with the government entities in Delaware. The Credentials Committee in Reno should be similarly guided.

## **2. Another Way that the LNC Might Have Proceeded**

Hindsight is, of course, 20/20. I provide the following points only to suggest that the LNC might have proceeded differently.

The December 5<sup>th</sup> motion appears to be an attempt by the LNC to let the Delaware Libertarians decide which leadership group they preferred. However, the Hinds group came to the LNC with ample evidence that Delaware Libertarians recognized their group as the legitimate leadership. Their case rested on the following: 1) the election results of the Delaware convention; 2) a petition from a majority of delegates to the Delaware state convention asking the LNC to recognize the Hinds group as the duly-elected officers of the LPD affiliate; 3) the inclusion in that petition of additional signers in excess of the number of credentialed delegates; and 4) the repudiation of the “purging” of the Hinds group by two of the three Delaware counties. Kent County actually temporarily suspended McVay’s membership as a consequence.

If the LNC’s intent in the December 5<sup>th</sup> motion was to recognize the will of the Delaware Libertarians, they had good reason to reaffirm the Hinds group leadership on November 21<sup>st</sup>. Indeed, it’s difficult to determine how a meeting of Delaware Libertarians after December 5<sup>th</sup> could result in anything but more chaos, since both groups indicated a repugnance for that solution and would likely hold their own meetings if they did convene.

In restructuring the Delaware Party membership, the McVay board required board approval of each new member. I am unaware of any other state affiliate that has this requirement. Because of it, however, it would be unlikely that any of the Hinds group and those who supported its legitimacy would ever be readmitted as a member in good standing.

## **3. A Warning to Other Affiliates**

The McVay group currently holds most of the Delaware LP’s assets in part because McVay refused to allow other board members admin access to the social media/webpage. Lack of access could have created problems for the LP of Delaware if McVay were killed in an accident or be otherwise indisposed. McVay claimed that these assets, which use the state party’s name, are his private property because he created them as an affiliate volunteer. Other state parties should be alerted to the fact that they need to have firm contracts with their volunteers which define exactly who owns and has access to such items. Without a clear and written understanding of which assets belong to the state party and which belong to their creator(s), other affiliates may find their legitimate officer holders without access to the tools they need to properly conduct the business of the party.

Libertarian Party Judicial Committee  
William McVay vs Libertarian National Committee & Bill Hinds vs. Libertarian National Committee  
Dissent by Dr. Chuck Moulton, joined by Vermin Supreme

## **1. Ruling**

With respect to the specific questions the Judicial Committee voted on, I ruled as follows.

On the statement “Events in the October 1 and November 20 Delaware meetings were not valid, and thus did not change the leadership and rules of the Libertarian Party of Delaware.” I voted abstain because the Judicial Committee lacks the authority to arbitrate internal state affiliate bylaws disputes under LP Bylaw 5.5 (“The autonomy of the affiliate and sub-affiliate parties shall not be abridged by the National Committee or any other committee of the Party, except as provided by these bylaws.”). This abstention does not mean I am undecided or lack strong personal opinions about the events in Delaware and its underlying bylaws dispute; it simply means I cannot rule on that bylaws dispute in my capacity as a member of the national LP Judicial Committee.

On the statement “The LNC’s actions culminating in the December 5 motion constructively disaffiliated the rightful Delaware affiliate.” I voted yes. The Libertarian National Committee’s resolution was insane and had no grounding whatsoever in our bylaws.

On the statement “Thus we rule to reinstate the LP’s Delaware affiliate, recognizing its officers (Mr. Hinds as chair) and other duly elected board members (including Dr. LePore and Mr. Casey) chosen by that affiliate under its properly adopted rules as they stood prior to the events of October 1.” I voted no. I profoundly disagree with the majority opinion’s reasoning and its conclusions. I would have recognized the McVay group.

If I had been in the majority rather than dissenting, I would have issued the following ruling.

The Judicial Committee reinstates the Libertarian Party of Delaware as an affiliate, which had been constructively disaffiliated by the Libertarian National Committee. The group of officers which must currently be recognized as the leadership of the affiliate by the Libertarian National Committee is the McVay group, following the previous JC precedent of Wagner vs. LNC (2011). The Judicial Committee rejects the appeal of the Hinds group to be recognized as the leadership of the affiliate under that same precedent.

The Judicial Committee rejects the challenge to the LNC region 5 alternate election of Otto Dassing, which was barred by LP Bylaw 5.6 because the appeal was not filed within 30 days.

The Judicial Committee voids the Libertarian Committee resolution of December 5, 2021 as constructively disaffiliating the Libertarian Party of Delaware by violating numerous bylaws concerning its affiliate relationship, including LP Bylaws 5.3, 5.5, and 5.6.

## **2. Wagner vs. LNC**

In 2011 the LP Judicial Committee ruled on a dispute concerning the leadership of the Libertarian Party of Oregon. At a meeting the state committee on March 31, 2011 under the leadership of chair Wes Wagner purported to amend the bylaws, re-organize the affiliate’s governing structure, and elect new

officers. Other party members showed up at a previously called state convention on May 21, 2011 canceled by the Wagner group and purported to elect new officers under the leadership of chair Tim Reeves. The Executive Committee of the LNC passed two motions on July 18, 2011: motion 1 recognized the bylaws of the Reeves group, motion 2 recognized the leadership of the Reeves group. On July 19, 2011 the Wagner group appealed its constructive disaffiliation to the Judicial Committee.

By a vote of 4-3 on August 25, 2011 the JC ruled for the Wagner group<sup>1</sup>, saying in part: “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”. On September 23, 2011 the JC issued a clarification of its ruling<sup>2</sup>, saying in part “The Judicial Committee did not rule that the LPO has no leadership. The Judicial Committee ruled that the LNC must by default recognize the affiliate representatives that are currently recognized by the affiliate’s secretary of state, and that it would take an exercise of the LNC’s 6.6 disaffiliation power to do otherwise.” Contemporaneously with this ruling JC member in the majority (chair of the JC and former LNC counsel) Bill Hall wrote the following<sup>3</sup> on August 27, 2011 [hereinafter, “Hall explanation”]: “For me, some of the most important indicia of who the LP’s current affiliate is in Oregon, pending future negotiation or litigation among LPO members, are: (a) Which group is recognized by the State as having ballot access. (Wagner’s group), (b) Which group has possession of the property of the LPO (funds, websites, state mailing list). (Wagner’s group), (c) Which group in a more general sense (campaign finance filings, contracts, etc.) is the LPO under State law. (Wagner’s group)”.

### **3. Applying Wagner vs. LNC to Delaware**

On October 1, 2021 at a special meeting of the state board of the Libertarian Party of Delaware, 5/9 of the board purported to adopt a bylaws change modifying the requirement to remove state board members from 4/5 of the whole board to 2/3 of the county chairs. They then purported to remove chair Bill Hinds and two other board members and elect Will McVay chair. At subsequent state board meetings, the McVay group purported to amend the bylaws in several other ways, including changing the membership criteria. The Hinds group approached the LNC asking for recognition as leadership of the affiliate. At a special online meeting on November 21, 2021 the Libertarian National Committee considered two motions, both of which failed: motion 1 sought to recognize the Hinds group, motion 2 sought to disaffiliate the Libertarian Party of Delaware. At its regular quarterly meeting in Boston on December 5, 2021 the LNC passed a resolution sharing data with both groups, demanding the Libertarian Party of Delaware hold a mass meeting determine which leadership to recognize, and committing to recognize the winner.

The Delaware case is the same exact fact pattern as the Oregon case: two groups with different officers and bylaws claiming to be the affiliate, one recognized by the state with all of the party assets and the other with none of those things. The LNC has ignored the Wagner precedent. All parties have wasted countless volunteer hours re-inventing the wheel.

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<sup>1</sup> Wagner vs LNC (August 25, 2011) – majority opinion by Gray, Hall, Sarwark, and Wrights.

[https://lpedia.org/w/images/1/16/Decision\\_in\\_Wagner\\_vs\\_LNC.pdf](https://lpedia.org/w/images/1/16/Decision_in_Wagner_vs_LNC.pdf)

<sup>2</sup> Wagner vs LNC: Clarification (September 23, 2011) – opinion by Gray, Hall, Sarwark, and Wrights:

[https://lpedia.org/w/images/4/4a/Clarification\\_of\\_Wagner\\_vs\\_LNC.pdf](https://lpedia.org/w/images/4/4a/Clarification_of_Wagner_vs_LNC.pdf)

<sup>3</sup> IPR comment by Bill Hall on August 27, 2011 (as cited by Caryn Ann Harlos):

<https://independentpoliticalreport.com/2015/08/lp-judicial-committee-meets-tomorrow-to-reconsider-prior-jc-decision-re-oregon-affiliate-carling-will-not-recuse-himself/#comment-1219556>

Applying the Wagner criteria, the Libertarian National Committee must recognize the McVay group as the leadership of the Libertarian Party of Delaware. In Delaware the government recognizes political parties through the Commissioner of Elections rather than the Secretary of State. Presently the Commissioner of Elections recognizes the McVay group with respect to campaign finance filings and voter registration data sharing free of charge. Recognition for ballot access purposes has not yet been tested with competing slates of candidates for an election. Looking at the broader criteria from the Hall explanation on IPR: all party assets in continuity with the Libertarian Party of Delaware before October 1 are controlled by the McVay group, including bank accounts, the debit card, PayPal, the website, Facebook page and group, Twitter, Instagram, YouTube, google groups, and various banners and literature. The Hinds group controls none of these things. If the Delaware Commissioner of Elections subsequently accepts a slate of candidates from the Hinds group rather than the McVay group under the Libertarian Party of Delaware's existing ballot access, then the Hinds group should be recognized instead; otherwise, the McVay group should remain recognized.

#### **4. Analysis of Wagner**

Rules are better than discretion. One might think unbridled discretion would give judges more leeway to make the best decisions under the circumstances, which are more tailored to particular facts and fairer to the parties. However, such broad discretion would have several disadvantages. First, many extremely similar cases would be considered from scratch, wasting countless hours rehashing the same arguments coming up with often similar conclusions. Second, actors would be incentivized to re-submit the very same case over and over again until they achieve the outcome they seek. Third, interested parties would have no idea *ex ante* of the outcome of any particular conflict, creating a type of regime uncertainty which makes planning difficult. Fourth, any arbitrating body would become politicized, giving everyone an incentive to elect their allies, who would then be expected to tilt rulings in their favor. In contrast, a clear rule that is simple to apply yields quick outcomes, saves time litigating, fosters certainty of the legal landscape allowing people to make plans and move on, and leaves judges as neutral arbiters. Following precedents from previous cases which include such rules (rather than considering every case with a clean slate) substantially increases the efficiency of the system.

The Wagner decision provides a clear rule. It is simple to apply. Determining which group is recognized by the state government presently is usually a bright line factual matter. The Hall explanation provides a clear rule. It is simple to apply. Who currently controls (rather than who wants to control) various assets is usually undisputed. There is no need whatsoever to look at underlying state bylaws disputes. This is a feature not a bug.

The national Judicial Committee has no authority to arbitrate state bylaws disputes. LP Bylaw 5.5 states "The autonomy of the affiliate and sub-affiliate parties shall not be abridged by the National Committee or any other committee of the Party, except as provided by these bylaws." The JC is an "other committee of the Party" in this context. The Wagner clarification of September 23, 2011 addressed this as follows: "[The Bylaws of the national Libertarian Party] do not grant the LNC (or the LP Judicial Committee) the power to interpret and then enforce the bylaws of a state political party committee that is a state-level affiliate of the national Libertarian Party. To the contrary, Article 6, Section 5, of the LP Bylaws expressly prohibits the LNC from 'abridg[ing]' the 'autonomy' of its state affiliates 'except as expressly provided by the [LP] bylaws.' The interpretation of a state-level affiliate's bylaws is an internal matter for the members of the state-level affiliate to pursue by negotiation, political action, litigation

and/or other action in state-level affiliate meetings, and before the state-level judicial committee (if any), courts and governmental agencies having jurisdiction over the state-level affiliate.”

Critics of the Wagner decision bemoan it as improperly out-sourcing recognition to a government entity. Bill Hall (JC chair in the majority of the Wagner decision in 2011) countered on August, 27, 2011: “Perhaps because of my long experience dealing with ballot access and campaign finance issues, I am acutely aware that our State Affiliates are independent political committees or organizations, whose existence is largely governed by the common and statutory law of their respective states. This means that your typical Secretary of State doesn’t care what the LNC says concerning issues such as which organization is the true LP affiliate in a state, or who the LP nominees for President and Vice President are. The typical Secretary of State only recognizes the authority of the State Affiliate in these and other political matters. Yes, we have Bylaws under which the LP’s State Affiliates loosely affiliate for certain purposes with the national LP and LNC. However, the ties imposed by those Bylaws are few and very limited.” We are a political party. As a political party we seek to run candidates for public office and the ability to do so is an important component of our identity. When one group has the ability to run candidates and the other doesn’t, it makes sense by default to recognize the group with state recognition and ballot access. Doing so isn’t an abdication of our duty to make our own tough decisions, it is simply embracing the reality of what it means to be a political party.

Bill Hall continued “For me, some of the most important indicia of who the LP’s current affiliate is in Oregon, pending future negotiation or litigation among LPO members, are: (a) Which group is recognized by the State as having ballot access. (Wagner’s group), (b) Which group has possession of the property of the LPO (funds, websites, state mailing list). (Wagner’s group), (c) Which group in a more general sense (campaign finance filings, contracts, etc.) is the LPO under State law. (Wagner’s group)”. Here he looks beyond state recognition to other indicators of recognition. For him it boils down to ballot access, assets, and recognition by other respected entities. There is a legal saying “possession is 9/10 of the law”. When an entity is in possession of various assets it is assumed by default to own those assets, absent strong evidence to the contrary.

This is another point of departure between critics of the Wagner decision and supporters of the Wagner decision: critics have the general opinion that LNC recognition of leadership will somehow enable that group to claim assets they do not currently possess. Lawyers – and anyone who has dealt with the legal system – know that is nonsense. LNC recognition of the Reeves group would not have allowed Reeves to claim bank accounts or ballot access controlled by the Wagner group. Similarly, LNC recognition of the Hinds group would not allow Hinds to claim bank accounts or ballot access controlled by the McVay group. The LNC cannot wave a magic wand to make assets or ballot access go where it wants. Assets may change hands voluntarily or as a final result of litigation in the court system, but LNC recognition has no relevance. From an efficiency standpoint, it therefore makes sense to recognize the group which already has the assets and ballot assets rather than the group which lacks these things.

There have been some criticisms of the Wagner decision’s ramifications which are straw men or pedantic. For example, it has been pointed out that not every state has a Secretary of State which recognizes political parties. In that case (as here), we should look at the appropriate entity, which in Delaware is the Commissioner of Elections. It has been pointed out that not every state has any sort of state recognition or ballot access. In that case the Wagner decision would simply be inapplicable. However, I would strongly recommend adopting the broader criteria Bill Hall mentioned contemporaneously: “(a) Which group is recognized by the State as having ballot access, (b) Which group has possession of the property of the LPO (funds, websites, state mailing list), (c) Which group in a

more general sense (campaign finance filings, contracts, etc.) under State law”. It has been pointed out the Secretary of State may suddenly recognize a random entity which is anathema to us, such as declaring Donald Trump state chair. The Wagner decision is implicitly limited in its scope of applicability to organizations with continuity: leadership and bylaws which can trace back to a time no one disputes legitimacy, then come forward to some sort of fork with some members embracing a bylaws or leadership change and other members claiming it was out of order.

Rules are not perfect. A rule may of course sometimes yield a bad outcome – an outcome which an overwhelming majority would see as unfair or wrong. In this case it is possible that the Wagner rule may force the LNC to recognize an entity found by many to be repugnant – perhaps due to actions which violate due process or disenfranchise members, perhaps due to press releases or social media regarded as un-libertarian. There is a remedy for such an issue: disaffiliation. Recognition by the Wagner rule is merely a default. The Libertarian National Committee has the power under Libertarian Party bylaws to overrule that default and recognize whatever entity it wants as its affiliate, provided it follows the proper procedures for doing so: disaffiliating by revoking the charter of the currently recognized affiliate under LP Bylaw 5.6 and chartering the affiliate it wants under LP Bylaw 5.2.

The disaffiliation procedure takes a 3/4 vote of the entire national committee and cannot be used within 6 months prior to a national convention. This supermajority requirement promotes stability. If a bare majority of those present at any given meeting could disaffiliate, shifting winds month to month could potentially lead the LNC to waffle back and forth between groups of affiliate leadership. This is exactly what the LNC has tried to do by recognizing leadership in an arbitrary manner by majority vote. What is an affiliate? When you have two different groups of officers, two different sets of bylaws, two different definitions of membership, two different organizational structures, it is hard to imagine these aren't two distinct affiliates. If the LNC can recognize whoever it wants as the officers of a state party and recognize whatever document it wants as the bylaws of a state party by majority vote, why ever bother using disaffiliation to revoke the charter of an affiliate by 3/4 vote and re-chartering a new affiliate? When the LNC does not recognize the legitimate officers of an affiliate, of course the LNC is constructively disaffiliating that state and the state affiliate should have a remedy.

The Wagner decision provides a clear rule which yields an efficient outcome. It recognizes the entity which already has ballot access and assets, avoiding the need to engage in costly litigation to re-acquire these things or to start from scratch with an expensive ballot drive. The LNC is free to follow the procedure set forth in the bylaws of disaffiliation and subsequent chartering of an affiliate if it dislikes the entity recognized by the Wagner rule in a particular case.

## **5. Election of Region 5 Alternate to the LNC**

On October 11, 2021 the state chairs of region 5 elected Otto Dassing as regional alternate to fill a vacancy created when David Valente resigned. This election was held according to the regional agreement filed when region 5 was formed at the last national convention. Due to the controversy, other state chairs voted to prohibit Delaware from participating in the election for regional alternate. If Will McVay had been permitted to vote for the Libertarian Party of Delaware, he would have voted for Steve Scheetz, resulting in a tie. The McVay group has alleged this was another example of constructive disaffiliation.

However, McVay filed his appeal on December 9, 2021, which is more than 30 days after the regional alternate election. LP Bylaw 5.6 states in part: “Failure to appeal within 30 days shall confirm the

revocation and bar any later challenge or appeal.” The McVay appeal was filed outside the statute of limitations, so the JC cannot consider that particular challenge.

## 6. Mass Meeting Resolution

On December 5, 2021 at its quarterly board meeting in Boston, MA the LNC passed a resolution<sup>4</sup> demanding that the Libertarian Party of Delaware hold a mass meeting in which members would vote which leadership to recognize [hereinafter “mass meeting resolution”]. This resolution is complete nonsense.<sup>5</sup>

Mass meeting resolution, resolved clause 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”. This is of course a direct violation of LP Bylaw 5.3 (“There shall be no more than one state-level affiliate party in any one state.”), which was cited 3 paragraphs up in a whereas clause.

LNC brief (page 2): “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.” Here the LNC is being intentionally obtuse. The Wagner JC opinion did not direct the LNC to treat the Wagner and Reeves groups equally. Rather, it directed the LNC to recognize the Wagner group and not recognize the Reeves group: “The Judicial Committee did not rule that the LPO has no leadership. The Judicial Committee ruled that the LNC must by default recognize the affiliate representatives that are currently recognized by the affiliate’s secretary of state, and that it would take an exercise of the LNC’s 6.6 disaffiliation power to do otherwise.”

LNC brief (page 5): “The LNC is empowered to share data with whomever it wants”, continuing later “No harm is being done by the LNC to either leadership roster. Each claimed Chair has equal access to all information”. In fact, the LNC has been sharing data with both leadership rosters in their capacities as affiliate leaders. It is disingenuous for the LNC to claim it can share data with anyone and therefore sharing with both groups would not be recognizing two affiliates and not be breaching its duty to the legitimate one. If this were true, nothing would prevent the LNC from picking its own favored leadership in every state throughout the country and treating each of them on equal footing with the actual elected affiliate leaders. Affiliates would be wise to steer clear of the CRM if a rogue LNC actually believes such behavior is permitted and appropriate, as any data sharing with national would be feeding a group of people seeking to undermine them in their own state.

Mass meeting resolution, resolved clause 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”. There is no provision in the bylaws of either the McVay group or the

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<sup>4</sup> LNC Meeting Minutes (December 4-5, 2021), pp. 25-33  
[https://drive.google.com/file/d/10JZN4Vfo2nfpHXApZsdpid\\_6U-6rC8r/view](https://drive.google.com/file/d/10JZN4Vfo2nfpHXApZsdpid_6U-6rC8r/view)

<sup>5</sup> The resolution could be concisely reworded as follows:

- WHEREAS, LP Bylaw 5.3 requires that the LNC only recognize one state-level affiliate party in any one state;  
WHEREAS, LP Bylaw 5.5 prevents the abridgement of the autonomy of the affiliate parties;  
WHEREAS, LP Bylaw 5.6 allows the LNC to disaffiliate, for cause, by a 3/4 vote of the entire committee  
IT IS HEREBY RESOLVED, the LNC takes the following actions:
1. The LNC will recognize two state-level affiliate parties in one state;
  2. The LNC will abridge the autonomy of an affiliate party;
  3. The LNC will disaffiliate, without cause, by a majority vote of those present

Hinds group for such a mass meeting. There is no provision in the bylaws of the national Libertarian Party for such a mass meeting. Neither the McVay group nor the Hinds group want such a mass meeting. According to RONR (as cited in the LNC brief): “A mass meeting is a meeting of an unorganized group”. The Libertarian Party of Delaware is already organized, which makes mass meetings inapplicable. Most importantly, the demand that the groups hold mass meetings to solve their differences directly violates LP Bylaw 5.5 (“The autonomy of the affiliate and sub-affiliate parties shall not be abridged by the National Committee or any other committee of the Party, except as provided by these bylaws.”).

Mass meeting resolution, resolved clause 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”. Recognizing one group of leaders preferably over another group of leaders by a majority vote of the LNC violates LP Bylaw 5.6, which requires a 3/4 vote of the entire national committee to disaffiliate. The notion that the LNC could recognize an illegitimate leadership over the legitimate leadership by majority vote would make bylaw 5.6 dead letter. The LNC should be familiar with the disaffiliation procedure because it took a vote on disaffiliation two weeks previously.

Even if the resolution were charitably interpreted as a motion to disaffiliate (its vote of 16-0-0 arguably clears the threshold of 3/4 of the entire committee), the motion would be defective both for failing to state a cause and for falling within the 6 month window prior to a national convention during which disaffiliation is prohibited under LP Bylaw 5.6 (“A motion to revoke the status of an affiliate party for cause must specify the nature of the cause for revocation.”, “The National Committee shall not revoke the status of any affiliate party within six months prior to a regular convention.”).

The mass meeting resolution constructively disaffiliated the Libertarian Party of Delaware by flagrantly violating multiple bylaws which concern the affiliate relationship. For these reasons the LNC’s resolution is void in its entirety.

## **7. Paths Forward Under the Dissent**

Within Delaware, if the Hinds group, national LP members, or registered Libertarians are dissatisfied with the McVay group’s organization, control of the ballot line and assets, or recognition by the LNC, they have several paths forward. First, they can use the political process to participate in the McVay organization, become members in good standing, show up at the next state convention, and vote in state leadership candidates of their choice who may amend the bylaws in ways they prefer. Second, they can litigate their bylaws dispute in a court of law to seek a judge’s order compelling that the organization and assets of the Libertarian Party of Delaware be turned over to them. Third, they can abandon the ballot access and assets of the Libertarian Party of Delaware, start from scratch building up their own resources, and persuade the Libertarian National Committee to disaffiliate the Delaware affiliate (for cause, by a 3/4 vote of the entire national committee, not in a period of 6 months prior to a national convention), then affiliate their group as the new Delaware affiliate.

If a future Libertarian National Committee decides to disaffiliate the Libertarian Party of Delaware – or any other affiliate – it would be well advised to look at the bylaws beforehand. The LNC suffers from a chronic problem of not dotting their i’s and crossing their t’s. In this case it is especially important to have a valid cause. Although the judicial committee will give wide deference to the LNC under LP Bylaw

5.6 (“At the hearing the burden of persuasion shall rest upon the appellant.”), that deference is not absolute. Some general advice: 1) cause must be actually specified; it cannot just be implicit, 2) the cause cannot be something that is false, 3) the cause has to be something bad – not just neutral or good. The LNC seems to have a knack for failing to clear this extremely low bar. For example, “for having two boards and the Libertarian National Committee unable to decide an appropriate board” is false (there is only one board recognized under the Wagner precedent), “for disenfranchising over 2000 Libertarians” is neutral (state parties routinely change their membership definition from registered Libertarians to dues paying members – and vice versa), “for violation of the spirit of their bylaws in installing a new state board” is probably false and at best murky (their bylaws apparently allowed amendment by majority vote of the state committee). In contrast, the following causes could be both true and bad behavior for a hypothetical state affiliate: “for making the organization an exclusive social club instead of an open organization by requiring board approval for each new member”, “for regularly posting bigoted tweets and memes from its official social media accounts which contradict the party platform and are embarrassing to Libertarians around the country”. Perhaps a future JC will be tolerant of the plainly defective causes the LNC seems married to; however, it would save us all a lot of hassle if the LNC would just pick a cause that is stated, true, and bad.

## **8. Majority Opinion Critiques of the Dissent**

The majority opinion makes numerous incorrect critiques of the dissent.

First, the majority asserts that the dissent rejects the challenge to the seating of Otto Dassing as region 5 alternate “only because of a timing issue rather than the more foundational lack of subject matter jurisdiction under the LP bylaws”. I never claimed the JC has subject matter jurisdiction over the alternate seating. I simply avoided an unnecessary, wordy, dicta analysis when the timing issue was already clear and outcome determinative.

Second, the majority asserts “no appeal was filed which meets the bylaw standard to allow the JC to consider voiding an LNC decision” (referring to the December 5 mass meeting resolution). When the LNC passes resolutions which violate bylaws concerning the affiliate relationship (in this case LP Bylaws 5.3, 5.5, and 5.6), the LNC constructively disaffiliates a state party. There is no need in these instances to petition the JC under the provisions of LP Bylaw 7.12 (requiring the signatures of 10% of convention delegates or 1% of members). Instead, the state party may appeal constrictive disaffiliation under LP Bylaw 5.6.

Third, the majority asserts “there is no bylaw which says past JC rulings on similar-fact-pattern cases constitute binding precedent”. I never claimed such a bylaw exists. The United States Constitution does not demand adherence to precedent by the federal court system either. However, judges all over the world have discovered the usefulness of precedent and implemented it through informal legal norms. If the Libertarian Party wants to call its appeals body a “judicial committee”, it would be well-advised to embrace some fundamental legal norms. I articulated the many benefits of rules over discretion and of binding precedent over reinventing the wheel earlier in my opinion.

Fourth, the majority asserts “the 2011 JC opinion was specifically rescinded by a later JC opinion in 2015”. Failure of the Judicial Committee to reject the appeal in 2015 was disappointing; the full story of what happened was horrifying. This is a textbook example of why rules are far superior to discretion.

Throughout the 2014-2016 LNC term, the national party recognized the Wagner group as the legitimate Oregon leadership. According to the Epstein petition<sup>6</sup> to the JC in 2015, staff “list the Wagner group as the Oregon affiliate on the Libertarian Party website [...], list the Wagner group chair as the Oregon affiliate chair when publishing state chair contact lists, provide the Wagner group with resources such as donor lists, and only allow the chair of the Wagner group onto the staff controlled email list for the state chairs of Libertarian Party affiliates”.

Therefore, in 2015 (four years after the original decision) the same parties brought the same fact pattern before the same body because a sore loser refused to accept the result and wanted to keep re-litigating the matter until it got its desired outcome. In anticipation of its do-over, the losers from 2011 had ran a coordinated campaign to stack the national Judicial Committee with its buddies. The chair of the 2014-2016 Judicial Committee, M Carling, was a member of the Oregon affiliate under Reeves and a party to the lawsuit. LNC chair Sarwark remarked<sup>7</sup> at the time “Another thing they have in real courts is a concept called laches. It’s possible that might apply to sitting on a claim for four years until you can get the tribunal you want.” This JC went on to “rescind” the previous ruling and claimed this resurrected the LNC executive committee’s motions recognizing the Reeves group.

LNC chair Sarwark analyzed the rogue JC decision as follows<sup>8</sup> immediately afterward: “There are a number of procedural defects in how the Judicial Committee came to meet, whether notice was proper, whether the issue they took up was actually authorized by the Bylaws, whether the explicit enumeration of causes in the Bylaws precludes rescinding a prior decision four years after the fact, etc. Any one or more of those would make the decision we received invalid.” He continued, “Until such time as [a disaffiliation] motion is moved and passes, it is my intent as Chair of the Libertarian National Committee to maintain the affiliate agreement with the Oregon political party, the Libertarian Party of Oregon [(the leadership formerly chaired by Wes Wagner and currently chaired by Lars Hedbor)].” The LNC, all state parties, and the LSLA (state chairs group) promptly ignored the rogue 2015 JC ruling, continuing to recognize the Hedbor group.

Fifth, the majority asserts “None of the LP bylaws regarding affiliate creation, interaction, or even disaffiliation base anything on the question of who possesses various assets. The dissenting opinion argues that because the job of the JC would be easier if an easily-applied, bright-line rule existed, that would be better than the messier reality of this organization engaging in self-governance”. The dissent embraces reality. The majority opinion assumes the JC and the LNC can wave their magic wands to make ballot access and party assets pass to their preferred affiliate leadership, ignoring the constraints of the national bylaws, the court system, corporate law, and state political party / ballot access law.

## **9. Path Forward Under the Majority Opinion**

I fully expect the ramifications of the majority decision to be sweeping and catastrophic. A super-majority of the JC and the LNC have learned absolutely nothing from the previous state affiliate leadership controversies, including the Oregon matter. They are continuing to repeat the same

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<sup>6</sup> Epstein vs. LNC, Epstein petition to the Judicial Committee (July 23, 2015), p. 1.

<sup>7</sup> IPR comment by Nicholas Sarwark on August 16, 2015.

<https://independentpoliticalreport.com/2015/08/lp-judicial-committee-meets-tomorrow-to-reconsider-prior-jc-decision-re-oregon-affiliate-carling-will-not-recuse-himself/#comment-1218540>

<sup>8</sup> LNC email from Nicholas Sarwark on September 15, 2015.

<http://hq.lp.org/pipermail/lnc-business/2015/021850.html>

mistakes, which will predictably generate the same outcome: years upon years of conflict and bad blood. Through failing to follow the well-reasoned and simple precedent of our predecessors in Wagner vs. LNC, the JC is making a much bigger mess. Through failing to follow the restraint of the Sarwark administration in inserting itself into internal state affiliate bylaws disputes, the LNC is making a much bigger mess. The larger elephant-in-the-room issue is not the Delaware dispute itself (which the JC and LNC have now substantially prolonged and made worse), but rather the terrible incentives of the majority opinion.

The majority opinion invites the following:

- The losing side of this dispute (the McVay group) may repeatedly resubmit this case to the Judicial Committee until it reverses itself.
- Other state affiliates may submit (and repeatedly resubmit) their internal bylaw and leadership disputes to the Libertarian National Committee and to the Judicial Committee.
- The Libertarian National Committee must schedule numerous meetings and waste countless volunteer hours arbitrating these disputes.
- The Judicial Committee will hear a myriad of appeals on these matters and re-invent the wheel each time.
- LP Bylaw 5.6 is now dead letter, as the LNC may effectively disaffiliate using a majority vote of those present (rather than 3/4 of the entire committee) – including less than 6 months before a national convention – without stating a cause.
- Rabble rousers around the country should create as much drama as possible with takeover attempts, knowing national recognition is henceforth a roll of the dice (completely unpredictable).
- Caucuses should elect their buddies to the LNC and JC (at any cost) to facilitate their takeover attempts, as recognition of affiliate leadership has become entirely political and discretionary.
- The credentials committee and national convention delegates will seat state delegations not sent by the affiliate that controls the ballot access of the state party, depriving the affiliate of its ability to vote on the presidential candidate and saddling the affiliate with a regional representative who not only doesn't represent the affiliate's interests, but actively works against the affiliate's interests in furtherance of the interests of an illegitimate group of leaders.
- The national LP will annoy the affiliate leadership with ballot access, risking that our presidential candidate won't be put on its ballot line, which either torpedoes 50 state ballot access or necessitates an expensive ballot drive to get a ballot line for the illegitimate leadership.
- State affiliates should ditch the national CRM database because state data will be yanked from affiliate leaders and shared with their intraparty opponents upon the whim of a shifting majority of the LNC.

Good luck with that. I dissent.

## OPINION OF VERMIN SUPREME

Fun Fact! Prior to accepting my role on the Judicial Committee, my only prior judging experiences were acting as a celebrity guest judge at a beard contest and of course, seeking the Kansas State Attorney General's office.

Be that as it may.

IMHo It is my small 'o' opinion that the JC of the LP does not have the authority to decide motions 1 and 3, and has exceeded their authority in doing so. Thus my no vote.

IMHo October 1st, (arguably worse than January 6th) is beyond the scope of the Judicial committee. Thus my no vote on 1 and 3.

IMHo November 21st the LNC attempted and was unable to vote-wise resolve the affiliate issue.

IMHo December 5th the LNC attempted to resolve the affiliate issue in a fashion that exceeded their authority.

IMHo If I were the LNC, I would have gone with a bake-off, or maybe a dance-off, to decide the rightful rulers of Delaware.

Article 5 section 5 "The autonomy of the affiliate and sub-affiliate parties shall not be abridged by the National Committee or any other committee of the Party, except as provided by these Bylaws."

Article 5 section 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."

Article 5 section 6 "The Judicial Committee shall either affirm the National Committee's revocation of affiliate party status or order reinstatement of the affiliate party."

Did and done.

Bylaws > No bylaws. I guess.

Bangs gavel.

Tosses gavel over shoulder.

Throws judge wig to the ground.

Removes judges robe.

Appears to be naked.

Leaves courtroom.

(Cue theme music)

JudgeVermin

February 15, 2022

Re: Delaware Affiliate Dispute

I conclude the Judicial Committee does not have jurisdiction in this matter. The time period within which an appeal could be acted upon by the Judicial Committee has expired. See addendum.

Article 5, Section 6 of the national LP Bylaws includes this provision which is foundational: The National Committee shall not revoke the status of any affiliate party within six months prior to a regular convention; and, furthermore, 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.

The LNC has not disaffiliated a party for the State of Delaware. We are now within the six-month safe harbor period when the LNC cannot act on disaffiliation. Since the LNC cannot act to disaffiliate the 90-day rule for the Judicial Committee to render a decision on appeal from disaffiliation cannot apply.

The Judicial Committee cannot act as an administrative proxy for the LNC in violation of the six-month rule because the LNC did not act prior to the six-month safe harbor. The Judicial Committee cannot disaffiliate state parties except by rendering a decision on a disaffiliation by the LNC. No disaffiliation, no appeal.

The delegates of the National Convention in May now have sole authority to determine which, if either, group shall be the single affiliate state party in Delaware on the merits. Until authorized by the delegates of the convention, the Judicial Committee has no role and need not comment on the merits by any of the disputing entities, the LNC or either group from Delaware.

Unless one Delaware group capitulates, the matter will still be pending when the national convention convenes; then that body of delegates has full authority under the Bylaws to resolve the dispute or immediately refer it to the Judicial Committee in session and then accept or reject such decision as the Judicial Committee shall then make and must make before adjournment.

If the delegates so instruct, the LNC elected by the convention must expeditiously decide which group, or no group, is the affiliate party. That LNC decision could then be appealed to the Judicial Committee any time after the convention and any time prior to six months before the 2024 national convention.

As Chair of the founding convention Bylaws committee, I will add that the intended purpose of the six-month rule is to prevent actions by any party or group at the state level to disrupt the organization of the regular national convention by the national committee and/or prevent the national committee from disrupting the selection of state delegates to the convention. The intent is to protect the rights of the members to control the administration of the Libertarian party and to prevent abuse of those rights at both the state and national levels. Members must assert their power through the Bylaws means provided.

It can be argued that this controversy is an appeal of decision by the LNC unencumbered by the six month no disaffiliation rule. I reject that argument. This controversy is a potential disaffiliation controversy which, by LNC default, must now be referred to the national convention delegates.

D. Frank Robinson, Member, LP Judicial Committee  
Opinion and addendum joined by Vermin Supreme

## Addendum:

### Memorandum

TO: Judicial Committee of the Libertarian National Committee.  
FROM: Beth Vest  
DATE: January 26, 2022  
SUBJECT: Matters regarding the Libertarian Party of Delaware

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The Judicial Committee (JC) has been presented two questions concerning the Delaware matter.

- 1 Can the Libertarian National Committee (LNC) make an affiliate hold a mass meeting competition as a condition of recognition by the national party, and how does that request comport with by-laws and Roberts Rule of Order Newly Revised (RONR) and;
- 2 can the Judicial Committee determine who should be the chair of LPD?

#### **Mass meetings are improper for an organized body.**

The LNC has called for both the LPD and the Hines Group in the Delaware conflict to hold competing General membership meetings, also properly defined as mass meetings. Mass meetings are defined in §53 of RONR.<sup>1</sup>

Mass meetings are only reserved for unorganized bodies and conflicts with the existing by-laws of the LPD, something the LNC cannot require. Asking an organization to do something against its own rules when those rules directly conflict with the organization's by-laws is a breach of the affiliate's autonomy and not allowed by the LNC's by-laws.

#### **Disaffiliation is only proper for the recognized national affiliate**

The Hinds Group has asked for relief as follows:

The appellants request that the Judicial Committee direct the LNC to recognize the LPDE affiliate led by Bill Hinds, the duly elected chair, and repudiate its constructive disaffiliation of same.

The Hinds Group has asked the JC to return Mr. Hinds to his position as chair. This is an internal matter within Delaware and meets none of the requirements of Article 8, §2, a-f. JC.; choosing a state chair is not on the list in Article 8, §2 of the LNC by-laws:

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 5, Section 6),
  - b. suspension of officers (Article 6, Section 7),
  - c. suspension of National Committee members-at-large (Article 7, Section 5),
  - d. voiding of National Committee decisions (Article 7, Section 12),
  - e. challenges to platform planks (Rule 5, Section 7),
  - f. challenges to resolutions (Rule 6, Section 2), and g. suspension of Presidential and Vice-Presidential candidates (Article 14, Section 5).

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<sup>1</sup> “§53. MASS MEETINGS Distinguishing Characteristics of a Mass Meeting

53:1 A mass meeting, as understood in parliamentary law, is a meeting of an unorganized group, which—in a publicized or selectively distributed notice known as the call of the meeting—has been announced: as called to take appropriate action on a particular problem or toward a particular purpose stated by the meeting’s sponsors, and as open to everyone interested in the stated problem or purpose (or to everyone within a specified sector of the population thus interested).”

The term constructive disaffiliation is misused within the context of the Hinds complaint since they were never a separate body subject to disaffiliation, constructive, or otherwise. They would need to be a separate recognized body for this to occur. The LNC did not disaffiliate the Hinds Group; therefore, the question of disaffiliation is not within the purview of the JC in this matter. If they had one, this matter would be properly adjudicated before the Delaware judicial committee.

Questions about notice and other internal actions within Delaware are part of their internal matters and seeking to determine who the chair is in Delaware is not covered on the list of permissible matters that the JC may consider when it concerns an internal chair competition.

### **Determining Constructive Disaffiliation**

There is a question of disaffiliation regarding the standing Delaware Affiliate. The LNC has told the LPD that they are not disaffiliated unless they receive fewer members at their "mass meeting." The requirement that they do this to maintain their affiliation is a blatant violation of Article 5 §5. Through their motion, the LNC attempts to define the membership of a state party within that state and then uses that membership to determine its own affiliate relationship. This is tantamount to disaffiliation with one group, and reaffiliation with another, and also breaches the autonomy of an affiliate by forcing it to redefine its own membership.

By rewarding affiliation based on competing meetings, the LNC has also set itself up to violate Article 5. §6: "The National Committee shall not revoke the status of any affiliate party within six months prior to a regular convention." If both groups held competing meetings within the next 30 days, then the LNC effectively disaffiliates one group and reaffiliates another.

Unfortunately, whether the general feeling is that the actions within Delaware were proper or not or who their chair is, are not matters for the LNC to consider or the JC to adjudicate. The JC has no mandate to hold a trial between two state actors. Making a lot of internal determinations about the state's internal by-laws and internal actions are not within the scope of the national organization's mandates and violates its directive to not meddle in affiliate's business. There is no need to determine who the rightful chair is, anything about notice, or any other internal matter. The committee can only incorporate those matters as a means to change internal leadership, which violates the affiliate's autonomy.

The only questions that should be answered here are does the LNC violate its own rules by breaching the autonomy of an affiliate by setting them up for disaffiliation through competing meetings, and did their December 5 motion, calling for constructive disaffiliation violate the requirement that an affiliate may not be disaffiliated within 6 months of the regular convention.

Forcing LPD to hold a mass meeting unauthorized by RONR, and contrary to their by-laws, as a condition of affiliation is a breach of its autonomy and can potentially cause the current, recognized affiliate to be disaffiliated in favor of another group. This will occur within six months of the regular national convention, so it will also violate article 5. §6. Conditioning continued affiliation upon the headcount of a disallowed meeting appears to constructively disaffiliate the LPD until they meet those conditions. They are subject to disaffiliation and removal by the LNC when that occurs, causing their current state to be more of a tentative affiliation. Tentative affiliation is no affiliation at all and constructively disaffiliates the LPD.