

**BEFORE THE JUDICIAL COMMITTEE
OF THE LIBERTARIAN PARTY**

RESPONSE OF THE LIBERTARIAN NATIONAL COMMITTEE TO EMERGENCY
PETITION FOR APPEAL FILED BY PETITIONERS ANDREW CORDIO, ET AL.

Pursuant to Judicial Committee Rule of Procedure 4, the Libertarian National Committee (“LNC”) respectfully submits this Response to the Emergency Petition for Appeal (“Petition”) that Andrew Cordio and several Libertarian Party members (“Petitioners”) filed on April 3, 2022.

Introduction and Factual Background¹

This matter arises from a dispute between the Libertarian Association of Massachusetts (“LAMA”) and a group of LAMA members whom the LAMA State Committee apparently expelled on January 10, 2022. Petitioners contend that this expulsion violated LAMA’s Constitution and its Bylaws. Some or all of the expelled members therefore organized a special convention at which they elected their own State Committee on February 26, 2022. Then, on March 23, 2022, LNC members Rich Bowen and Pat Ford moved a Resolution to Recognize the Rightful State Committee of the Libertarian Association of Massachusetts (LAMA) (the “Resolution”), which would establish that the LNC “recognizes” the state committee elected at the expelled members’ special convention as the LAMA State Committee.

The Resolution does not address the impact it would have, if adopted, upon the original LAMA State Committee. Under Libertarian Party Bylaws (“LP Bylaws”) 5.3, however, “[t]here shall be no more than one state-level affiliate party in any one state.” If the Resolution were adopted, therefore, LP Bylaw 5.3 would require that the LNC revoke its recognition of the original LAMA State Committee as the governing body of the Massachusetts state affiliate.

On March 24, 2022, the Chair ruled that the Resolution was out of order, citing 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.”). That ruling was sustained by a vote of the full LNC on April 1, 2022. Petitioners then filed their Petition on April 3, 2022, initiating this appeal.

According to Petitioners, the LNC not only has the power, but the duty, to consider and vote upon the Resolution. That is incorrect. By its express terms, the Resolution seeks to insert the LNC into a state-level dispute between two entities, each of which claims to be the LAMA State Committee, for the sole purpose of determining that one entity violated the state affiliate’s Constitution and Bylaws, while the other complied with them, thus entitling the latter entity to formal recognition as the LAMA State Committee. Notably, the Resolution fails to cite any provision of the LP Bylaws that confers such authority upon the LNC, nor could it. The LP Bylaws do not empower the LNC to sit as a judiciary over state affiliates for the purpose of determining whether they comply with their own Constitutions or Bylaws, much less to recognize new leadership of a state affiliate by means of an LNC resolution. On the contrary, the LP Bylaws

¹ For purposes of this Response, the LNC relies on the facts alleged in the Emergency Petition for Appeal.

expressly prohibit the LNC from abridging the autonomy of state affiliates “except as provided by these bylaws.” LP Bylaws 5.5.

Furthermore, Petitioners do not dispute that LAMA was duly granted affiliate party status pursuant to LP Bylaw 5.2, and that the LNC properly recognized its State Committee as LAMA’s governing body at least until January 10, 2022, when the State Committee voted to expel a number of members. Petitioners claim, however, that the LNC must adopt a resolution that recognizes a new entity as the LAMA State Committee, because the LNC’s failure to do so would render the new entity a “constructively disaffiliated” affiliate. But Petitioners ignore the fact that the Resolution would require the *actual disaffiliation* of the entity that all parties agree was the properly recognized LAMA State Committee at all times prior to January 10, 2022.

The Resolution thus places the LNC in the position of choosing between the “constructive disaffiliation” of an entity the LNC has not previously recognized as an affiliate, or the actual disaffiliation of an entity that the LNC has undisputedly recognized as an affiliate at all times relevant to this matter. As set forth below, however, the Chair’s ruling that the Resolution was out of order does not contravene any LP Bylaw, and the LP Bylaws do not authorize the LNC to take the action that the Resolution contemplates. That ruling should be upheld.

Judicial Committee Jurisdiction

Petitioners assert that the Judicial Committee has jurisdiction over this matter pursuant to LP Bylaws 8.2(a) and 8.2(d). LP Bylaw 8.2(a), which governs matters involving “suspension of affiliate parties” pursuant to LP Bylaw 5.6, is plainly inapplicable here. Under LP Bylaw 5.6, there is only one procedure by which the LNC may “revoke the status of an affiliate party” – it must do so “by a vote of 3/4 of the entire National Committee.” LP Bylaws 5.6. The LNC has not undertaken any such vote. Therefore, LP Bylaw 8.2(a) does not confer jurisdiction upon the Judicial Committee over this matter.

Petitioners nevertheless assert that LP Bylaw 8.2(a) allows the Judicial Committee to exercise jurisdiction over this appeal because the LNC’s failure to adopt the Resolution amounts to “constructive disaffiliation” of a state affiliate. But the term “constructive disaffiliation” does not appear anywhere in LP Bylaw 8.2, which establishes the sole and exclusive basis for the Judicial Committee’s exercise of subject matter jurisdiction. L.P. Bylaw 8.2 (“The subject matter jurisdiction of the Judicial Committee is *limited to consideration of only those matters expressly identified as follows....*”) (emphasis added). Nor does “constructive disaffiliation” appear anywhere else in the LP Bylaws. Further, Petitioners themselves make no attempt to define the term, but simply assert that it supports the Judicial Committee’s exercise of jurisdiction under LP Bylaw 8.2(a) here. What LNC action then rises to the level of a “constructive disaffiliation”? In Petitioners’ view, taking no action at all, as the LNC has done here, is sufficient. Petitioners thus invite the Judicial Committee to expand its jurisdiction far beyond the specific bases enumerated in LP Bylaw 8.2 – in direct violation of that bylaw – without any identifiable limiting principle. The Judicial Committee should reject the invitation.

If the Judicial Committee has jurisdiction over this matter, therefore, it must be pursuant to LP Bylaw 8.2(d). Under LP Bylaw 8.2(d), the Judicial Committee has jurisdiction over matters

involving “voiding of National Committee decisions”. LP Bylaw 8.2(d) (citing LP Bylaw 7.12). The LNC does not dispute that the Chair’s ruling the Resolution out of order, as upheld by the LNC, is a decision for purposes of LP Bylaw 8.2(d). The scope of the Judicial Committee’s review of that decision is limited, however, by LP Bylaw 7.12, which LP Bylaw 8.2(d) cites. LP Bylaw 7.12 specifies that the Judicial Committee “shall” consider whether the decision “contravenes specified sections of the bylaws.” LP Bylaw 7.12. Accordingly, the only issue properly before the Judicial Committee is a narrow one: whether the Chair’s ruling the Resolution out of order contravenes any specific bylaw or bylaws, and that ruling may not be “vetoed by the Judicial Committee” unless it does. LP Bylaw 7.12

The Resolution

The Resolution, if adopted, would require that the LNC “recognize[] the results of election at the special convention [held by the expelled LAMA members] and the State Committee elected therein.” As noted above, the Resolution does not address the impact that such action would have upon the original LAMA State Committee, which the LNC presently recognizes, and Petitioners likewise fail to address the issue. If adopted, however, the Resolution would require that the LNC revoke its recognition of the original LAMA State Committee. LP Bylaw 5.3 (“There shall be no more than one state-level affiliate party in any one state.”). The Resolution would establish new leadership of the Massachusetts state affiliate.

The asserted basis for the LNC to take such action is that the LAMA State Committee allegedly violated LAMA’s Constitution and Bylaws, whereas the expelled LAMA members complied, at all relevant times, with LAMA’s Constitution and Bylaws. In particular, the Resolution avers that:

- The petition for a special election that LAMA members submitted on December 19, 2021 “contained greater than 10% of valid member signatures” and thus complied with Article 2, Section 5 of the LAMA Constitution;
- The petition “was submitted with an agenda,” and thus complied with another quoted but unspecified provision of the LAMA Constitution;
- The petition was “properly constituted”;
- The LAMA State Committee’s response to the petition was “was to expel en masse all petition signatories, in violation of basic member rights, due process, and Article 1 Section 3 of the LAMA bylaws, which allow for expulsion of ‘a person from membership’ (not mass expulsions)”;
- The LAMA State Committee’s “vote to expel LAMA members was taken during a supposed State Committee meeting that had no agenda, thus denying targeted members notice of any proposed action against them and an opportunity to defend themselves,” and also that “the meeting was called to order in closed session, against longstanding custom (their parliamentary authority does not address the topic at all), and contrary to the public notice given”;

- The LAMA members were “wrongfully expelled” and among them were “two State Committee members who were denied any access to due process,” and this action violated Article 4, Section 10 of the LAMA Constitution;
- A member of the LAMA State Committee “has not been a resident of Massachusetts for close to a year” but still “cast their vote for the expulsion,” and this action violated Article 4, Section 8 and Article 1, Section 1 of the LAMA Constitution;
- Two “duly elected members” of the LAMA State Committee organized and conducted a special convention in compliance with Article 2, Section 5 of the LAMA Constitution, and these members “provided notice to the extent possible given deliberate obstructive actions and omissions by former State Committee members”;
- A “new State Committee” was elected at the special convention, and their election complied with Article 2 of the LAMA Bylaws and Article 2 of the LAMA Constitution;
- The elective offices of the LAMA State Committee are “now filled” by certain named individuals; and
- The “newly elected State Committee” has noticed LAMA’s annual convention for April 24, 2022, at which time LAMA’s next State Committee and national convention delegates “will be elected”.

The foregoing factual findings and legal conclusions constitute the sole basis for the action proposed by the Resolution. Notably, however, the Resolution fails to cite any provision of the LP Bylaws that authorizes the LNC to adjudicate whether a state affiliate violated its own Constitution and Bylaws, or to revoke recognition of a state affiliate’s State Committee on the basis of such violations. The Resolution simply assumes that the LNC properly serves as judge, jury and executioner in such matters.

The Chair’s Ruling That the Resolution Is Out of Order Should Be Upheld

1. The Chair’s Ruling Does Not Contravene Any LP Bylaw.

As stated above, the Chair’s ruling that the Resolution is out of order cannot be vetoed unless the Judicial Committee concludes that it “contravenes” a specified section or sections of the LP Bylaws. LP Bylaw 7.12. Yet the Petition does not even attempt to identify any specific bylaw or bylaws that the Chair’s ruling purportedly contravenes. It only asserts that “[i]mpacted Bylaws include the entirety of Section 5.” Petition at 7. Any matter involving a state affiliate arguably “impacts” Section 5, of course, but the Chair’s ruling does not contravene the entirety or any part of it. Rather, the Chair’s ruling is consistent with Section 5.

The LNC has played no role in the dispute between the LAMA State Committee and the members it expelled. Prior to that dispute, the LNC’s actions with respect to LAMA were at all times consistent with Section 5. The LNC duly recognized LAMA as a state affiliate pursuant to

LP Bylaw 5.2 and it has properly recognized LAMA as a state affiliate ever since. Now that the dispute has arisen, the LNC has properly declined to take any action to resolve it, consistent with LP Bylaw 5.5's mandate that a state affiliate's "autonomy ... shall not be abridged" by the LNC "except as provided by these Bylaws." The Chair's ruling the Resolution out of order complies with that mandate. It properly leaves this state-level dispute to the state affiliate to resolve. The Resolution, by contrast, would have the LNC intervene for the express purpose of revoking recognition of the existing LAMA State Committee by recognizing a new one. There could hardly be a greater abridgement of a state affiliate's autonomy.

Because the Chair's ruling does not contravene any LP Bylaw, there is no basis for it to be vetoed under LP Bylaw 7.12. The Petition should be denied.

2. *The LP Bylaws Do Not Authorize the LNC to Take the Action Contemplated by the Resolution.*

There is no question that the LNC has the power to "revoke the status of any affiliate party, for cause, by a vote of 3/4 of the entire National Committee." LP Bylaws 5.6. Further, "cause" for such revocation might include the LNC's conclusion that the affiliate had violated its own Constitution or Bylaws. But the Resolution does not seek to revoke LAMA's status pursuant to LP Bylaw 5.6. Instead, the Resolution would accomplish only one result: its adoption would replace the existing LAMA State Committee with a new State Committee.

Neither the Resolution nor Petitioners identify any LP Bylaw that authorizes the LNC to take action that effectively replaces an affiliate's leadership, and with good reason. As explained above, such action would abridge the affiliate's autonomy, in clear violation of LP Bylaw 5.5. And LP Bylaw 5.5 expressly states that the LNC may not abridge an affiliate's autonomy "except as provided by these Bylaws." Because Petitioners do not and cannot cite any LP Bylaw that authorizes the LNC to take the action contemplated by the Resolution, their appeal should be denied on that ground as well.²

Even if the LNC had authority to revoke its recognition of an affiliate's State Committee and recognize a new State Committee by means of a resolution requiring a simple majority, as opposed to the 3/4 majority required for revocation under LP Bylaw 5.6, the asserted basis for the LNC to take such extraordinary action here is far from clear. The Resolution asserts, for instance, that the LAMA State Committee's decision "to expel en masse all petition signatories" violated Article 1, Section 3 of the LAMA Bylaws, because that provision "allow[s] for expulsion of 'a person from membership' (not mass expulsions)." But the power to expel "a person" necessarily includes the power to expel *any* person. Nothing in the text of Article 1, Section 3 of the LAMA Bylaws supports the conclusion that the State Committee lacks power to expel more than one person at a time.

To be sure, the LNC may disapprove of the LAMA State Committee's apparent expulsion of a substantial number of members by means of a single vote, but the LAMA Bylaws vest it with the authority to do so. Petitioners' objection to the State Committee's exercise of that authority

² Significantly, at present the LNC does not even have authority to revoke LAMA's status as an affiliate, because it "shall not revoke the status of any affiliate party within six months prior to a regular convention." LP Bylaws 5.6.

does not give the LNC authority to undo that action by means of a resolution that would replace the State Committee with a new one.

**The LNC Has Power to Take Appropriate Action to Address Petitioners' Concerns
Without Exceeding Its Authority Under the LP Bylaws**

Petitioners claim that the LNC's failure to adopt the Resolution is necessary to prevent the LNC from "giving data, services, directing potential members, directing potential donors, and recognizing lists of delegates submitted by any other than the rightful leadership..." Petition at 7. But the LNC can take other actions to prevent that harm, which do not exceed its authority under the LP Bylaws or abridge a state affiliate's autonomy in violation of LP Bylaw 5.5. For example, the LNC could resolve not to share data, services or other resources until the dispute involving LAMA is satisfactorily resolved. Additionally, following the next regular convention, the LNC could revoke LAMA's affiliate status pursuant to LP Bylaw 5.6. The LNC could also express its disapproval of the LAMA State Committee's alleged actions by means of a motion to censure.

Adoption of the Resolution, by contrast, would set a dangerous precedent. It would establish the LNC as the ultimate arbiter of any internecine dispute within state affiliates, including disputes over whether they have complied with their own Constitutions and Bylaws, notwithstanding the lack of any apparent authority for the LNC to wield such power. If the LNC were to assume such power for itself – or if the Judicial Committee were to decide that it must – state affiliates would surely revolt at the notion that the LNC has the final word on whether they were following their own Constitution and Bylaws.

Conclusion

This dispute involving LAMA is unfortunately just the latest in an increasingly common event: a state-level dispute between two entities that each claim to be a state affiliate's rightful leadership. But Petitioners' attempt to resolve that dispute by means of an LNC resolution revoking recognition of LAMA's State Committee and recognizing a new State Committee was out of order. The ruling of the Chair should be affirmed.

Dated: April 22, 2022

Respectfully submitted,



Whitney Bilyeu
Chair
Libertarian National Committee