

Memorandum *In Re Imhoff-Doursharm*

To: Members of the Judicial Committee
From: Timothy A. Raty, Judicial Committee Member
Subject: Allegations that Committee is Improperly Called to Order
Date: July 8, 2022

DISCLAIMER: THIS MEMORANDUM HAS NOT BEEN DRAFTED OR REVIEWED BY ANY PERSON WHO IS A LICENSED ATTORNEY UNDER ANY LAWS. NOTHING HEREIN SHOULD BE CONSTRUED AS LEGAL ADVICE

Background

We have received a petition, allegedly from the Libertarian Party of Idaho State Central Committee (“SCC”), which is comprised of Todd Corsetti and Amber Corsetti (“Petitioners”), requesting that the Judicial Committee consider the expulsion from the Idaho Libertarian Party of alleged Chair Jennifer Imhoff-Dousharm and alleged Acting Treasurer Robert Imhoff-Dousharm (“Respondents”). This entire matter will be referred to as *In Re Imhoff-Doursharm*.

Jennifer has provided a formal response to such petition in which she requested that the Judicial Committee immediately vacate *In Re Imhoff-Doursharm*, stating that its initiation was improperly conducted “by members who have deliberately excluded the entirety of the body of the Libertarian Party of Idaho State Central Committee.”

We are thus left with two competing requests, both allegedly coming from the SCC. We have *not* been tasked with “resolving or making recommendations for . . . ambiguities or conflicts within or between the Bylaws or other governing documents” (Idaho Libertarian Party 2021 Bylaws art. VIII, § 5) and, as such, is not in a position to declare *what* the composition of the SCC is in a way which is binding upon the State Party.

However, a determination does need to be made on our part as to whether or not *In Re Imhoff-Doursharm* was initiated by the SCC, because our authority to conduct this matter arises solely from a request by the SCC or the Executive Board. If the petition did not come from the SCC, we cannot continue on this matter in compliance with the Bylaws and any of our actions or results will be nullified.

Considering the seriousness of the matter (expulsion from the State Party is the most severe action a Judicial Committee can take) and the fact that an improper hearing could cause further rifts in the State Party (not to mention discrediting the Judicial Committee as a fair and impartial body), I believe we need to make a determination as to whether or not Jennifer’s request for vacation is proper.

Judicial Committee

A judicial committee is not organized or defined by State law, thus both the National and State Libertarian Party (“LP”) bylaws govern the creation and functions of this committee.

Per Idaho LP 2021 Bylaws art. VIII, § 5 (“Bylaws”) “[t]he Judicial Committee may be tasked by the State Central Committee or the Executive Board with examining, reviewing, taking testimony, holding hearings, and resolving or making recommendations for . . . expulsion of a member[.]”

As such, the Judicial Committee may only initiate its authority when done at the behest of either the “State Central Committee or the Executive Board”. Any assertion of its authority beyond such is invalid.

State Central Committee

Because both Petitioner and Respondent are, essentially, claiming to be acting under the authority of the SCC, a key determination for our purposes is determining what the composition of the SCC is under Idaho law (which supersedes both National and State bylaws, *Robert’s Rules of Order, etc.*).

Idaho Code Ann. § [34-504](#) states that “[t]he central committee of each political party shall consist of all legislative district chairmen, all county central committee chairmen, all state committeemen, and state committeewomen selected by the county central committees. Each of the above members of the state central committee shall be entitled to vote at all meetings of the state central committee.”

The officers listed take their offices as follows: (1) a “legislative district chairman” is elected by the “precinct committeemen representing the precincts within the legislative district” (*Ibid.* § [34-503](#)); (2) a “county central committee chairman” is elected by “the precinct committeemen representing the precincts within the county” (*Ibid.* § [34-502](#)); and (3) state committeemen and state committeewomen are elected in the same manner as county central committee chairman (see *Ibid.*). Please note that “state committeemen and state committeewomen” are offices distinct from “precinct committemen.”

Fundamentally, the officers who comprise (either in whole or at a minimum, depending on ones interpretation of *Ibid.* § [34-504](#)) the SCC are elected to their positions by precinct committeemen. Idaho law does not provide for the appointment to such positions.

Precinct Committeemen and County Central Committee

Law

Precinct committeemen are elected during the primary elections conducted in May of every even-numbered years (see Idaho Code Ann. § [34-624](#)). A person may only be elected as a precinct committeeman if they shall have received a minimum of five votes (see *Ibid.* § [34-1208](#)).

Regarding county central committees, each of these is comprised of two types of officers: (1) the precinct committeemen of the precinct within the county; and (2) the county chairmen elected by such precinct committeemen (see *Ibid.* § [34-502](#)).

Concerning vacancies, under Idaho law, vacancies for precinct committeemen may only be filled by the county central committee (see *Ibid.* § [34-502](#)). Also under Idaho law, if there is a vacancy in the office of county central committee chairman, “it shall be the duty of the state central committee chairman to call a meeting of the precinct committeemen of the county, and the precinct committeemen shall proceed to elect a chairman of the county central committee for the balance of the unexpired term.” (*Ibid.*) A caveat is provided which involves the Bylaws, which will be addressed later in this memorandum.

Also of relevance to this matter is that “the precinct committeemen within each county shall meet at the county seat within ten (10) days after the primary election and at the time and date designated by the incumbent county chairman” (*Ibid.*)

Facts

Prior to the April 2, 2022 State Party Convention (“Convention”), according to the Respondents in their interview with the Judicial Committee on July 6, 2022 no precinct committeemen were elected in Idaho during the May 19, 2020 Primary. As a result, no one served as precinct committeemen for the statutorily prescribed term starting May 27, 2020 and ending May 25, 2022 (see *Ibid.* § [34-624](#)).

According to the facts presented, Todd Corsetti was elected as a precinct committeeman for Precinct # 38 in Bannock County on May 17, 2022 (click [here](#) for details). While others did run for precinct committeemen in other parts of the State and did receive 100% of the votes cast for the offices they sought, they failed to obtain the minimum number of five votes required by Idaho law (see *Ibid.* § [34-1208](#)). As such, Todd Corsetti is the only elected precinct committeeman for the Idaho Libertarian Party.

Todd called to order a meeting of the Bannock County Central Committee (of which he would be the only member), voted himself as both Chair and Secretary, and elected Amber Corsetti (who is not a Bylaws Sustaining Member, as defined under [Article III](#) of the Idaho Libertarian Party’s Bylaws), as a state committeewoman. This meeting occurred *circa* mid-May, 2022 (meeting minutes were sent to the Idaho LP Executive Board on May 29th).

Analysis

Because no one had been elected as precinct committeemen during the 2020 Primary, and because county central committee chairs may only be elected to such positions by such precinct committeemen per Idaho Code Ann. § [34-502](#) and the Bylaws (see 2021 Bylaws art. VII, § [3](#)), none of the officers existed to comprise the Bannock County Central Committee by the 2022 Primary, thus the offices of precinct committeemen and county chairman were vacant.

When Todd was elected precinct committeeman in the 2022 Primary, the Bannock County Central Committee became “active” (finally having at least one member) and Todd proceeded to call meeting of such Committee “at the county seat within ten (10) days after the primary election” (*Supra* § [34-502](#)) and elected himself as chair of such Committee.

However, there is one major problem: This type of meeting, by Idaho law, must be “at the time and date designated by the *incumbent county chairman*.” (*Supra*; emphasis added) Because there was no county chairman, such meeting could not be called until the office of county chair was filled.

To fill a vacancy in the office of county central committee chair, Idaho law requires that “the state central committee chairman” call a meeting of the county precinct committeemen, who will then proceed to elect a chairman (see *Supra*). This must occur prior to the meeting mandated by *Supra*.

The SCC chairman is, according to the Bylaws, the Chair of the State Party (see Bylaws art. VII, § 1). The Chair of the State Party at the time (which is disputed) did not call for a meeting to fill the vacancy in the Bannock Central Committee Chair, thus this Chair remains vacant.

A precinct committeemen *qua* committeemen is not a member of the SCC under *Supra* § [34-504](#). The chair of a county central committee is, but Todd’s meeting in which he elected himself to chair of the

Bannock County Central Committee – which I believe was conducted in good faith – was not properly conducted under *Supra* § 34-502 and the Bylaws, thus, the election of himself to chair and Amber Corsetti to state committeewomen is invalid. Todd cannot be considered a member of the SCC *via* Bannock County Central Committee chair; Amber cannot be considered a member of the SCC *via* state committeewoman.

Legislative District Committee

The rules regarding Legislative District Central Committees are similar to those for County Central Committees. The elected precinct committeemen within a legislative district must meet “within eleven (11) days after the primary election, the meeting time and place to be designated by the incumbent legislative district chairman.” (Idaho Code Ann. § [34-503](#)) If the office of the legislative district chairman is vacant, “it shall be the duty of the state central committee chairman to call a meeting of the precinct committeemen of the legislative district[.]”

Todd did call for, and conducted a meeting of, the Legislative District Central Committee for Legislative District # 28 and elected himself chair (being the only member of such Committee). However, because the office of the District Chairman was vacant at the time, it could not be called to order in accordance with *Ibid*. The “state central committee chairman” should have called for a meeting of the precinct committeemen to vote for a chairman, prior to such meeting being called.

The end results are the same as those referenced above. The results of the meeting are invalid, since the meeting was not properly conducted under Idaho law and our Bylaws. Todd cannot be considered a member of the SCC *via* Chair of the of the Legislative District # 28 Central Committee.

Idaho Libertarian Party Bylaws

As mentioned previously, there is a caveat under Idaho law concerning the filling of vacancies for both county central committee chair and legislative district committee char. While Idaho law supersedes any conflicting provisions of the Party’s Bylaws, Idaho Code Ann. §§ [34-502](#) & [34-503](#) do, respectively, defer to “state party rules, adopted as provided in [sections [34-505](#) & [34-506](#)], Idaho Code, provide otherwise” in filling vacancies in the offices mentioned.

The “state party rules” referenced are the “rules and regulations promulgated and adopted by the state conventions or the state central committee”. Per Idaho Code Ann. § [34-707\(4\)](#), a state convention may “[a]dopt rules, regulations and directives regarding party policies, practices and procedures.”

These “state party rules” are enshrined in the Bylaws (available [here](#)). Article VII §§ [3](#) & [4](#) set forth the procedures for filling vacancies in the two aforementioned offices, but these procedures are the same as those of *Supra* §§ 34-502 & 34-503:

“When a vacancy exists in the office of county central committee chairman, it shall be the duty of the state central committee chairman to call a meeting of the precinct committeemen of the county, and the precinct committeemen shall proceed to elect a chairman of the county central committee for the balance of the unexpired term. . . .

"When a vacancy exists in the office of legislative district central committee chairman, it shall be the duty of the state central committee chairman to call a meeting of the precinct committeemen of the legislative district, and the precinct committeemen shall proceed to elect a chairman of the legislative district central committee for the balance of the unexpired term."

In either case, the two offices in question can only be filled *via* a meeting called by the state central committee chairman. As such, the conclusions prior are reinforced: Under both State law and Party Bylaws, Mr. Corsetti's meetings were not called by the incumbent county or legislative district central committee chairs and, thus, are invalid (as are the results of such meetings).

Robert and Jennifer, in their interview with the Judicial Investigative Subcommittee, did allude to an interpretation that the clause "unless state party rules . . . provide otherwise" in *Supra* § 34-502 also applies to filling vacancies of precinct committeemen, which is covered by the following from the Bylaws:

"In the event there are no duly elected precinct committeemen within that county, the dues paying members of the Party residing within that county shall select precinct committeemen for the purpose of this and the following Section. The selection process of precinct committeemen shall mimic the election process provided for in state law to the maximum extent practical."

(Bylaws art. VII, § 3)

This is questionable, since such clause only appears in the paragraph concerning filling vacancies of county central committee chairs and not that concerning vacancies of precinct committeemen, thus it may have been the State Legislatures intent for this caveat to only apply to the former type of vacancies. For our current purposes, however, this is irrelevant (but may be relevant if the Judicial Committee continues with these proceedings).

State Central Committee

Idaho Code Ann. § [34-504](#) states the following:

"The state central committee of each political party shall consist of all legislative district chairmen, all county central committee chairmen, all state committeemen, and state committeewomen selected by the county central committees. Each of the above members of the state central committee shall be entitled to vote at all meetings of the state central committee."

The law is not clear on whether or not the State Central Committee must consist *only* of the officers listed, or whether this is the bare minimum. According to my research, no case law exists on this point, or any authoritative guidance from the offices of the Idaho Secretary of State or Idaho Attorney General.

Logical interpretations can be made either way. The intransitive verb "consist" would seem to indicate that the SCC can only be comprised of the officers listed, particularly when coupled with the fact that if the State Legislature did not care about the composition of the SCC of each political party, they would not have created this section of law.

However, “consist” does not always refer to an exclusive list and it may have been the State Legislatures intent to require that the SCC consist of a bare number of officers, but left additional officers to the discretion of the political party.

In practice, at least one other political party in Idaho has additional members of their SCC. The Idaho Republican Party takes a more liberal view of *Ibid.*, since Article I, Section 4 of their “State Party Rules” hold that voting membership in their State Central Committee consists of “all voting members of the State Executive Committee”, which would also include the State Chairman under Article II, Section 2 (click [here](#)).

We have contacted the Idaho Secretary of State’s office (and indirectly the Office of Idaho Attorney General) for clarification on this point, but have received no response.

In addition to the Republican Party, our own Bylaws hold the following relationship between our executive officers and the SCC:

- “1. . . . The four officers of the Party (Chair, Vice-Chair, Secretary and Treasurer) are the officers of the State Central Committee.
2. The State Central Committee shall *in addition* consist of all legislative district chairmen, all county central committee chairmen, and all state committee persons selected by the county central committees. *Each of the above members* of the state central committee shall be entitled to vote at all meetings of the state central committee . . .” (Bylaws art. VII, §§ [1 & 2](#); emphasis added)

While Section 1 states that the four officers are “officers” of the SCC (and, on its own, does not establish them as *members* of the SCC, let alone *voting members*), the clause “*in addition consist*” indicates that the four officers are considered members of the SCC. The clause “*each of the above members*” also holds that all such referenced members are voting members. Thus, the four officers would be considered voting members of the SCC.

Again, logical arguments can be made either way as to the interpretation of *Supra* § 34-504 and the Bylaws could be non-compliant with such section of law. Short of an internal resolution as to such interpretations, a court decision may be the only remedy for a definitive answer.

If a strict interpretation is made, then the only conclusion that can be drawn is that there was no functional SCC prior to the 2022 State Convention, that such Convention could not be convened in accordance with *Supra* § [34-707](#), and the results of such Convention should be considered null (including the composition and rules of the Judicial Committee). A functional SCC does not exist currently either under such interpretation, because none of the offices necessary to comprise the SCC are filled – and can only be filled, when the SCC chair calls a meeting to fill such vacancies.

If a liberal interpretation is made, then the conclusion is that the four officers mentioned in the Bylaws are voting members of the SCC, that the 2022 State Convention was likely properly convened, and that the results of the Convention are valid. The current composition of the SCC would consist only of the four officers elected at the Convention – and these, being the only members of the SCC, are the only ones with the authority under the Bylaws to convene the Judicial Committee for action.

Problems with the Idaho Libertarian Party

The root of all these issues can be traced back to the dormancy of the Party *circa* 2004 – 2020, if not earlier. Generally (if not literally), precinct committeemen, who are the primaries in determining what the composition of the State Central Committee is under Idaho Code Ann. §§ [34-502](#) through [34-505](#), were not elected to their positions.

Unfortunately, Idaho law has a conundrum in the fact that vacancies in the office of precinct committeemen can only be filled by the county central committee, which can only be comprised of other precinct committeemen and the chair of the committee (the vacancy of which, under current Idaho law and Party bylaws, can only be filled when the state central committee chair calls a meeting for filling such vacancy). If no precinct committeemen have been elected at the county level, there is no county central committee and a party *cannot* fill such vacancies.

This is very much the case for the period between August 2020 and May 17, 2022 when there were no elected precinct committeemen. Because there were no elected precinct committeemen, there could not be any of the other officers which comprise the SCC under *Ibid.* § 34-504. Depending on one's interpretation of *Ibid.* § 34-504, there either was no SCC after the 2020 Primary Election or the SCC was solely comprised of the four executive officers listed in the Bylaws.

Again, what the exact composition of the SCC is beyond the scope of the Judicial Committee and *In Re Imhoff-Dousharm*. Our only concern, at the moment, is whether or not the SCC initiating these proceedings.

The analysis above indicates that the Judicial Committee was not properly called by the SCC and that this matter should be dismissed. While Todd is a proper precinct committeeman under Idaho law, the meetings in which he elected himself chair (and thus a member of the SCC) were not conducted in accordance with Idaho law and he is, therefore, not a member of the SCC. He cannot elect himself as chair of either the Bannock County Central Committee or Legislative District # 28 Central Committee Chair, nor elect any other person to an office under which they become a member of the SCC, *until* the State Central Committee Chair has called for a meeting to fill the vacancy in such office.

Even if such meetings are properly called and Todd elects himself (and others) to positions which make them members of the SCC, there is still the outstanding question as to whether the executive officers are also voting members of the SCC, under Idaho law. If they are members, then they must have a say on whether these proceedings should be initiated. If they are not members, then questions arise as to the legitimacy of the Judicial Committee, since it may not have been properly elected at a State Convention which was not convened by any SCC, in accordance with Idaho law.