



REPLY BRIEF OF THE LIBERTARIAN PARTY OF DELAWARE

In its brief, the LNC claims that there is a credible dispute over the identity of the current officers and Board of the Libertarian Party of Delaware, and so the LNC must take it upon itself to recognize both claimants and decide a procedure to pick one, and that it has in the meantime adopted a posture of neutrality. All of these claims are incorrect.

- The one and only LPD Board is in sole control of all assets of the Libertarian Party of Delaware. The State of Delaware, through the Commissioner of Elections, has recognized the LPD Board's current Chair. As the state-recognized party, only LPD may nominate Libertarian candidates to appear on the ballot. The majority of LPD's Board as it was elected at the previous convention, and as its membership was recognized by Mr. Hinds himself, has consistently stood by its removal of Mr. Hinds and that Mr. McVay is the current LPD Chair. At no time since his removal has Mr. Hinds had a quorate majority of LPD's Board in support of his claims. In short, Mr. Hinds' claim to still be the Chair of LPD has no more reality to it than Donald Trump claiming to still be the President of the United States.
- The alleged rules violation (insufficient notice) that Mr. Hinds claims and on which he builds his case is one that is internal to LPD and its Board to decide, not for the LNC to decide. Mr. Hinds was offered the chance to chair a meeting of the LPD Board as it previously stood. At this amply noticed meeting, he and the other Board members were offered the chance to fully participate and vote, including to raise points of order, have rulings of the chair, and to appeal those rulings to the body. He chose not to participate for the simple reason that he knows, as the LNC knows, that he did not have the votes to sustain his position. The LPD Board, acting through a majority of its duly elected members, is fully capable of deciding its own parliamentary procedures and interpreting its own rules.
- We note that the courts of the state of Delaware are famously specialized in handling matters of corporate law with relative efficiency, a competitive advantage which attracts much business to our state. No legal claim against LPD demanding control of LPD assets has been made by Mr. Hinds and his organization. No such claim has been brought because it would not only be wrong and doomed to failure, but because it is transparently frivolous. The LNC's own confused resolution about the matter is the only action from any entity recognizing Mr. Hinds' baseless claim to be able to seize control of LPD away from LPD's elected Board.

- We can find no instance of any court, anywhere in the United States, ever ordering the reinstatement of a private organization's chairman over the objection of an undisputed majority of the organization's governing board. At most, damages may be awarded for breach of contract, which is not at issue here. But the imposition of a Chair against the LPD Board's own decision is totally incompatible with the very idea of having a board in charge of an organization and its assets. The chair answers to the board, not the other way around. And since LPD, like many state parties, does not have any separate appeals committee such as the Judicial Committee, the Board itself is by default the final appeal.
- The LNC offers no limiting principle for the astonishingly broad power it has claimed to act, in effect, as though it were an LPD judicial committee empowered to overrule the LPD Board, as well as with the power to rewrite LPD's Bylaws and decide who is an LPD member. The LNC could, under this theory, depose any state party officers and board members at any time, so long as they found at least one person willing to claim to be the affiliate chair, no matter how spurious or false that claim is. It could invent rules of its own making for picking the affiliate chairs and board members, as it has done here, concocting their own procedure out of thin air with no basis in any version of the LPD's Bylaws.
- The LNC claims that it is not picking sides and is merely "encouraging" (with coercive penalties attached) LPD's members to make a decision. This, however, is inaccurate. The LNC has picked a side, by endorsing Mr. Hinds' claimed version of the LPD Bylaws and LPD membership. The LNC has further said that it will not accept any determination of the matter which does not align with the Hinds/LNC version of LPD Bylaws and membership.
- The LNC further inaccurately states that it "continued" to recognize both Mr. Hinds and LPD. This is also false; prior to the December 5 resolution, only LPD had ongoing access to the LNC's affiliate services, as the only entity with any legal and practical continuity with LPD as it stood prior to the controversy. If Mr. Hinds has been newly granted access to the LNC's affiliate services, it was not until after and as a consequence of the December 5 LNC Resolution. In fact, neither Mr. Hinds nor any of his claimed board members were the persons who had such access previously, even when he was still LPD Chair. We note this to underscore that if such access has since been granted, it was not in continuity with the previous access already accorded to LPD.
- The LNC denies that its actions constitute constructive disaffiliation of LPD. But if this is not constructive disaffiliation, it is hard to imagine what would be. LPD's rights as an affiliate have been abrogated, the LNC has purported to recognize two different entities as its Delaware affiliate, and LPD has been threatened with the final revocation of its affiliate status in favor of another organization if the LNC's demands are not met. If this course of action is compatible with the Bylaws, then the restrictions and procedures laid out for disaffiliation in the Bylaws are meaningless.

- The structure of the LNC and its affiliates is, in some sense, akin to the structure of federalism in the US Constitution, and in fact our protections for state autonomy and limits on the LNC's power are much stronger and more absolute. By way of analogy, imagine a disputed election for governor of a state, with the losing candidate challenging the results, such as recently happened in Georgia's 2018 gubernatorial election. And imagine that, instead of the state courts and the state's legislature applying state laws to resolve the question, Congress asserted it has the authority to decree who the real governor is. This would be manifestly illegitimate and beyond the scope of their power even in case of a real and credible dispute. Even federal courts are not permitted to intervene on such a question of purely state law unless federal constitutional claims are made. In the present case, no allegation has been made that LPD violated any provision of the national Party Bylaws.
- Likewise, such a dispute within a state party is internal to the state party, to be decided by the state party's own internal processes. In the case of LPD, that process is the LPD Board, and the LPD Board has spoken.
- With regard to the election of Mr. Dassing, the LNC claims in its brief that this was a result of a "majority vote" of the affiliate chairs. As noted in our previous brief, this is inaccurate. Mr. Dassing was not elected by a majority of the affiliate chairs in accordance with the regional agreement, and a majority of the state chairs have no power to refuse to let one of the region's affiliates cast its vote. Such a result was only reached by the disenfranchisement of LPD, on the initiative of a single LNC member. Though this matter is of lesser importance than LPD's affiliate status, the abrogation of LPD's right of representation on the LNC is again incompatible with any theory other than constructive disaffiliation.
- Regarding the document filed by Mr. Hinds, we first wish to point out that the Judicial Committee lacks subject matter jurisdiction. As Mr. Hinds is not the Libertarian Party of Delaware, and thus can't be disaffiliated by the LNC, his only avenue to bring a challenge to an LNC action is through the delegate petition process. However, we do recognize and accept the practicality of hearing from Mr. Hinds about his petition in the upcoming combined hearing, and so do not press the point in that regard. This is purely for the practical convenience of the Judicial Committee and because you may hear from whomever you wish. But our case is the Libertarian Party of Delaware v. the Libertarian National Committee; it is not Bill Hinds v. Will McVay. The question we bring before you is the validity of the LNC's actions, not who is the real LPD Chair, which is already settled and not within the purview of the national Party.
- We simply note that the correct disposition of the petition by Mr. Hinds is that it be dismissed for lack of jurisdiction. As to the underlying claims therein, aside from their apparent need to document their personal dislike for Mr. McVay and other LPD Board members, we incorporate in response all of the same points made above in response to the LNC. We do not seek to waste the Judicial Committee's time in arguing about who said what on Facebook or the extraneous political positions and activities of the individuals involved. Bylaws > Drama.

- There is one point of agreement. After the Hinds organization (and its functionally identical entity, the political action committee “Mises Caucus” and its Delaware chapter) initially welcomed and celebrated the December 5 LNC Resolution, Mr. Hinds now agrees it is invalid and challenges it on much the same grounds that LPD does. Thus, as it stands now, nobody in Delaware recognizes the LNC Resolution’s validity and, so far as we are aware, nobody intends to abide by the terms of its demands.
- The 50-year history of the Libertarian Party unfortunately includes many instances where the national Party has attempted to insert itself into an internal dispute within a state party, with both individual LNC members and the LNC as a body picking sides and/or trying to grant affiliate status to both sides. Arizona, Oregon, New Hampshire. Currently, there are members of the LNC attempting to insert themselves into a similar dispute in Massachusetts over the validity of that affiliate’s board decisions. Delaware should not be added to that ignominious list and the Judicial Committee has the opportunity to put a stop to this Bylaws-violating pattern of conduct by the LNC. In so doing, you would not only vindicate the rights of the Delaware party, but all state parties whose autonomy is now threatened.
- The results of these LNC interventions have only ever been to make matters worse, which is why National Convention delegates through the national Party Bylaws have expressly denied this power to the LNC. We ask the Judicial Committee, which the delegates have also created for this express purpose, to uphold that principle and restore LPD to all its rights as the Delaware affiliate of the Libertarian Party.

Respectfully submitted,



Will McVay, State Chair,
Libertarian Party of Delaware.