

August 15, 2024

Regarding the appeal of the LPWI against the LNC:

The Judicial Committee finds for the LNC, 7-0.

Mr. Tarnoff filed an opinion, joined by Mr. Latham and Mr. Stratton.

Mr. Seebeck filed an opinion, joined by Mr. Montoni.

Mr. Kinsella filed an opinion.

Mr. Krawchuk filed an opinion.

Opinion of Mr. Tarnoff, joined by Mr. Latham and Mr. Stratton

On May 11, 2024, Libertarian Party of Wisconsin (LPWI) Chair Stephen Ecker signed an agreement, purportedly on behalf of, and purporting to bind, the LPWI to join ultimately with the Libertarian Parties of Alaska, Arizona, Colorado, Hawaii, Idaho, Kansas, Kentucky, Michigan, Minnesota, Montana, Nebraska, New Mexico, Nevada, Oregon, and Wisconsin into a super region encompassing over 20% of the total national party sustaining membership, entitled to two representatives to the Libertarian National Committee (LNC). The LPWI contends its Chair does not have authority to bind the LPWI in such matters as regional agreements, and on May 20, the LPWI Executive Committee held a meeting at which it affirmatively rejected ratification of the agreement and the following day informed the Secretary of the LNC that the assent of its chair had been of no effect, thus rendering the LPWI's purported participation in the region void *ab initio*. On May 23, the LNC nevertheless accepted the regional agreement, including the LPWI. The national convention began the next day and the following day, May 25, the window for formation of regions closed. The LPWI seeks to void the LNC's decision to accept its participation in the regional agreement.

The signature of someone who is not authorized to bind an organization has no effect, rendering the agreement invalid *ab initio*.

Article V, section 2.1 of the LPWI Constitution reads:

The Executive Committee shall be responsible for the control and management of all the affairs, properties, and funds of the Party consistent with its by-laws and any resolutions which may be adopted in Convention.

Article II, section 1 of the LPWI Bylaws reads:

The Chair shall be the chief executive officer of the Party, holding the powers of administration pertaining to the ordinary business affairs of the Party ..."

All power to act is thereby designated to the Executive Committee, although the Chair is granted authority to act in matters of "ordinary business affairs".

Neither Appellant nor Respondent has offered sufficient evidence as to the meaning of the phrase “ordinary business affairs”, and a casual search appears not to reveal it to be a well-defined term of art. Unfortunately, Appellant also offers no evidence as to what the drafters of the LPWI Bylaws meant by that phrase. The phrase does seem to appear regularly in the literature in reference to emergency powers of boards, enabling corporations to act in good faith outside of their normal procedures in furtherance of “ordinary business affairs” in times of emergency. The most natural meaning of the phrase, then, would seem to encompass acts that are either necessary to perform in an emergency or when the board is otherwise unable to act, or in perfunctory or administrative matters that do not involve making substantive decisions of policy.

As the decision as to which region, if any, the affiliate shall join is a substantive one, and there appears to have been no emergency condition necessitating immediate action by the chair, the decision to bind LPWI to a region was not one of “ordinary business affairs”, and thus not within the powers granted the LPWI Chair under its Bylaws.

Nevertheless, state chairs may act from time to time in presumption of the intent of the assemblies they represent, and are generally presumed to have the authority to do so. It is reasonable for parties who seek to bind an organization to assume the head of that organization has the authority to bind it. In this case, the standard procedure for decades, if not since the formation of the National LP, has been to rely on the word of the chair of the affiliate in most if not all matters involving affiliates, including region formation. It would place a high burden indeed on the LNC and fellow affiliates to have to seek confirmation of every state chair’s authority to bind each affiliate. Practicality and standard course of business has thereby created a standing duty on the part of affiliates to repudiate explicitly any *ultra vires* act committed by their state chair. Passivity or substantial delay would constitute implicit assent on the part of the affiliate to the chair’s bond.

In this case, the LPWI acted as soon as it was able, to affirmatively repudiate its chair’s assent to the regional agreement. It then timely informed the LNC that its chair lacked the requisite authority to sign the agreement and that it explicitly refused to be bound by it.

“Affiliate parties may, by mutual consent, band together to form ‘representative regions’”¹¹ Other members of the Judicial Committee argue that, for any number of reasons, the LNC may accept as dispositive the word of a state chair that he has the authority to bind the affiliate he represents. However, that finding eviscerates the mandate of the Bylaws that the agreement must be by mutual consent of the affiliate parties, as opposed to the party chairs. They would, in effect, judicially rewrite the Bylaws to say that *“State chairs may, by mutual consent band together to form ‘representative regions’.”* If the facts in this case do not allow the affiliate explicitly to reject an *ultra vires* act by its chair to bind it, and allow it explicitly to express its legitimate will, what facts would? Allowing this case to stand for the proposition that the state chair’s word is dispositive in this matter means there is no recourse for a party whose chair acts without authority, contrary to the explicit mandate of the Bylaws.

¹ Libertarian Party Bylaws Article 7.2.c.

That said, however, the entitlement to presume the authority of a state chair to bind the affiliate, and the concomitant requirement of the affiliate to repudiate timely and explicitly *ultra vires* acts of its chair, apply to all parties to an agreement. In this case, the Libertarian Parties of the fifteen states that did agree to bind themselves in the regional agreement were certainly parties to the agreement. In fact, the LNC is not a party to the agreement at all. As there is no evidence the LPWI attempted to inform the other affiliate parties of its explicit repudiation of its chair's apparent authority, i.e. as it has informed the wrong entity, it has implicitly assented to its chair's *ultra vires* act to bind it in the regional agreement with respect to those parties, which in fact constitute all parties to the agreement. In the absence of any notice to the contrary, those fifteen Libertarian Party affiliates are entitled to assume the word of the LPWI chair as binding, and LPWI has done nothing to dissuade them of that reasonable belief. Any less would be unfair to those fifteen affiliates, who joined the region in good faith and thereby possess a legitimate expectation interest in the size and strength of the region they presume to have joined.

Appellant also argues that the agreement carries a financial burden which, pursuant to its Constitution and Bylaws, renders it a matter solely for its Executive Committee to decide. The provision of the agreement in question states:

"It is anticipated that the LNC will meet in-person at least two times a year which poses a financial obligation on the representative(s) in order to attend. The Regional Chairs agree that upon election of any Regional Representative, they will enter into a separate agreement, if requested by the Regional Representative, for either the Regional Representative or the Regional Alternate to attend each meeting at a maximum amount of \$1,000 per meeting spread amongst the Regional States for a maximum of two meetings per year, whether or not the LNC meets more frequently. This separate agreement may allocate the cost-sharing equally or proportional upon the percentage of national sustaining membership in the Regional States." (emphasis added)

While it may not be reasonable to presume a state chair has authority to bind the affiliate to a financial burden, this provision merely constitutes an "agreement to agree," an unenforceable statement of good faith intent which is not legally binding. As such, this agreement does not financially bind LPWI.

The decision of the LNC to accept the regional agreement including the LPWI was correct and should stand.

Opinion of Mr. Seebeck, concurring in judgment only, joined by Mr. Montoni

Form of Appeal

1. As noted in another case: *"Establishing standing to appeal is not the same as the actual appeal itself, ... It is a multiple-step process: first, proper form must be established by the Petitioner. Then standing must be established by the Petitioner. Once those are established, the question of jurisdiction must be answered, and only if there is jurisdiction does the Judicial Committee examine the actual appeal."* (Harlos v. LNC)

2. Respondent claims that the appeal is defective because it does not list a Respondent. However, per Judicial Committee Rule 1.3, there is no requirement to list a Respondent, just *“the identity by individual name of each member, affiliate, or Party committee that would be directly affected by the requested ruling.”* (1.3.4)

3. After two prior attempts, the Petitioner did form their appeal properly to the satisfaction of the Judicial Committee.

Standing

4. Petitioners has provided 135 unconfirmed signatures of credentialed national convention Delegates. 117 of them are confirmed as credentialed Delegates. 10% of 997 credentialed Delegates is 100. Signature threshold has been met in accordance with Article 7, Section 12 of the national Bylaws. Standing has been established.

Jurisdiction

5. Petitioners have requested the following reliefs (here placed in a list for clarity):

- A. Voiding of the LNC decision of May 23, 2024, to ratify the Region 1 Agreement.
- B. “Any other action that gives the agreement validity as it pertains to Wisconsin.”
- C. Removal from Region 1.
- D. Removal of applicable “party sustaining membership” from the region.
- E. Removal of a regional representative if the 10% of party sustaining membership threshold it not me after the removal of Wisconsin from Region 1.

6. It is necessary to examine if the Judicial Committee has subject matter jurisdiction to rule on each of these requests.

7. The first requested relief, to void the LNC decision of 5/23/24, falls under Article 8, Section 2, subsection d of the national Bylaws as subject matter jurisdiction. It will be addressed below.

8. The second requested relief lacks clarity. What exactly does “any other action etc.” mean? If it refers to the LNC Secretary accepting the regional Agreement and under her authority declaring the region is constituted, then the Judicial Committee has no jurisdiction over the actions of the LNC Secretary in the performance of her job duties. That is a question that should be addressed by the LNC as a matter of amending their Policy Manual, or if necessary, a Bylaws Amendment at a national convention. In any case, the Judicial Committee cannot invalidate a regional representation agreement as that is not within the subject matter jurisdiction as given in Article 8 Section 2 of the national Bylaws. This requested relief should be denied.

9. The third requested relief is to remove LPWI from Region 1. Again, this is not within the subject matter jurisdiction of the Judicial Committee as given in Article 8 Section 2 of the national Bylaws. The Judicial Committee has no authority over regions or who enters into their formation agreements. This requested relief should be denied.

10. The fourth requested relief is to remove the LPWI party sustaining membership from the region. While this would accompany removing LPWI from the region, it is effectively a duplication of the third request, being a distinction without a difference. Again, this is not within the subject matter jurisdiction of the Judicial Committee as given in Article 8 Section 2 of the national Bylaws. The Judicial Committee has no authority over regional representation agreements or their terms. That falls to the LNC to decide in accordance with the national Bylaws. This requested relief should be denied.

11. The fifth requested relief is to remove a regional representative (and although unrequested, a corresponding alternate) from the LNC on the grounds that removal of LPWI from the region would drop the region below a 10% threshold for a representative (in this case, 20% for a second representative). However, removal of a regional representative is the purview of the regional affiliates themselves, in accordance with Article 7, Section 8 of the national Bylaws. Therefore, it is not within the subject matter jurisdiction of the of the Judicial Committee as given in Article 8 Section 2 of the national Bylaws. The Judicial Committee cannot alter regional representation. That is up to the regions and the LNC. This requested relief should be denied.

12. In summary, the Judicial Committee is limited in subject matter jurisdiction to the first relief request to void the LNC ratification of the Region 1 Agreement, and the other requested reliefs are outside the subject matter jurisdiction of the Judicial Committee and therefore per se should be denied.

13. One question remains: should the ratification vote of the LNC be overturned?

14. To answer that question, it is first necessary to lay out the sequence of events that caused that vote.

LPWI Actions

15. The regional representation agreement was signed on 5/11/24, and it was filed with the LNC Secretary the same day.

16. The agreement states: *"This agreement shall become effective upon filing with the Secretary of the national Libertarian Party a number of copies of this agreement signed by Regional Chairs with enough national party sustaining members to form a representative Region."* That filing had been accomplished on 5/11/24, so **the agreement is self-executing**, in effect, and binding.

17. The LPWI Executive Committee held a "Special Meeting" on 5/20/24, 9 days later, with LPWI District 1 absent, but 13 of 14 members present. LPWI Bylaws Article III, Section 1 requires three weeks' notice for an LPWI Executive Committee meeting. At that meeting, per the minutes provided by Petitioners, a motion was made *"that the Chair be instructed by the ExCom to inform the LNC and relevant state affiliates that he did not have the authority to sign a regional representation agreement, and that therefore that agreement is null and void. Further, regional affiliation for LNC representation will be decided by a majority of LPWI delegates present at the national convention, and if there is a tie, the LPWI Chair will cast the deciding vote."* After some debate and dividing the question, the motions passed without objection.

18. It is currently unknown how the LPWI Delegation voted or if they voted at all at the national convention.

LNC Actions

19. The regional representation agreement was signed on 5/11/24, and it was filed with the LNC Secretary the same day. The Agreement itself indicates that it is in effect upon its filing with the LNC Secretary.

20. The LNC held their normal and noticed pre-convention meeting on 5/23/24. In that meeting the LNC voted 10-4 (71%) to ratify the filing and acceptance of the Region 1 Agreement.

Is Ratification Necessary?

21. A motion to ratify is an incidental main motion under RONR (10:54-57). Specifically, 10:54 states:

10:54 The motion to ratify (also called approve or confirm) is an incidental main motion that is used to confirm or make valid an action already taken that cannot become valid until approved by the assembly. Cases where the procedure of ratification is applicable include:

- *action improperly taken at a regular or properly called meeting at which no quorum was present (40:6–10);*
- *action taken at a special meeting with regard to business not mentioned in the call of that meeting (9:15–16);*
- *action taken by officers, committees, delegates, subordinate bodies, or staff in excess of their instructions or authority—including action to carry out decisions made without a valid meeting, such as by approval obtained separately from all board members (49:16) or at an electronic meeting (9:30–36) of a body for which such meetings are not authorized;*
- *action taken by a local unit that requires approval of the state or national organization; or*
- *action taken by a state or national society subject to approval by its constituent units.*

22. A motion to ratify is an incidental main motion that must be seconded, is debatable, is amendable, and requires a majority vote to pass except in certain circumstances under 10:5-7 that require a different threshold (which do not apply here because notice was given).

23. The first, second, fourth, and fifth bullets above are clearly inapplicable to this case. That leaves the third bullet to be addressed.

24. The question then becomes, “Was the ratification valid?” It definitely was moved, and passed by more than a two-thirds vote even though only a majority was necessary. But was the motion in order in the first place? Meaning in this case, was the motion made because the actions of the LNC Secretary were “in excess of their instructions or authority” (third bullet, above)? The form itself indicates that the filing of the Agreement with the LNC Secretary constitutes the act of making the Agreement be in effect, regardless of any relative actions of the LNC Secretary afterwards—once the LNC Secretary gets it, it’s operative. The form itself provides the instructions to the LNC Secretary, and the LNC Secretary followed them, to the letter, and not in excess of those instructions or their authority. As such, the motion was

NOT in order since the base requirement of an action being in excess of authority in order to move to ratify is not met.

Does it Matter?

25. In this case, the effects of the ratification had the vote failed, or if it was never taken, or if it was out of order, are all the same: the prior filing of the Agreement is unaffected, and it is still in effect by its own terms. Overturning that motion or ruling it out of order and thus null and void does NOT reverse or invalidate the separate prior act of the filing. See RONR 10:12: *“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.”* Put another way, lack of affirmation is not rejection, or vice versa; it’s simply neutral. Or to put it in simplest logical numerical form, $-1 \neq 0 \neq 1$. The ratification vote itself was actually unnecessary due to the self-executing nature of the Agreement, but it was requested and noticed for the meeting separate from the filing. No other region had their agreements ratified, either. The only reason to even move to ratify the Agreement when it was unnecessary was to create a procedural appeal path to the Judicial Committee. But that procedural path includes an improper motion that was out of order to begin with.

26. Because the ratification motion was out of order, the ratification is null and void. However, that does not nullify the Agreement or LPWI’s role in it. As noted above, the agreement is self-executing. Nor does this Judicial Committee have any authority to change or nullify it. As such, **the Region 1 Agreement is operative, and all the state affiliates who signed on to it, including LPWI, are a part of it and bound by it.**

27. However, the rest of the circumstances of the case are deserving of some nonbinding comment. While it is acknowledged that these comments are outside the jurisdiction of the Judicial Committee to make any decisions, they still should be considered to serve as suggestions and guidance on process and pointing out discrepancies that need fixing on all sides to avoid this type of situation in the future.

LPWI Constitution and Bylaws:

28. It is necessary to examine in toto the LPWI Constitution and Bylaws to examine the LPWI Executive Committee argument. It is STRONGLY suggested that LPWI combine the Constitution and Bylaws into one Bylaws document. See RONR 2:8.

29. The specific powers of the LPWI Executive Committee are explicitly defined in these locations:
- A. Constitution Article 4-4, setting membership dues
 - B. Constitution Article 5, Section 1-6, appointing to fill vacancies in the Executive Committee
 - C. Constitution Article 5, Section 2-1, spending money
 - D. Constitution Article 5, Section 3-2, appoint replacements to the Constitution and Bylaws Committee
 - E. Constitution Article 5, Section 4-1, charter affiliate parties and set geographical areas for the affiliates

- F. Constitution Article 5, Section 4-3, suspend or revoke an affiliate
- G. Constitution Article 6-1, select time and place for the Annual Convention or special conventions
- H. Bylaws Article 1-1, set a standard petition application for affiliate party chartering
- I. Bylaws Article 1-2, setting geographical area for an affiliate
- J. Bylaws Article 1-3, setting the dues allocation between the LPWI and affiliates
- K. Bylaws Article 2-3, requiring report information from the Secretary
- L. Bylaws Article 2-4, requiring report information from the Treasurer
- M. Bylaws Article 3-1, setting times and places for quarterly meetings
- N. Bylaws Article 4-1, installing and maintaining financial accounts
- O. Bylaws Article 4-2, designate who can work the bank accounts
- P. Bylaws Article 4-3, set the annual audit
- Q. Bylaws Article 4-4, incur debt for the Party
- R. Bylaws Article 4-5, spend certain amounts by higher vote authorization
- S. Bylaws Article 5-2, suspend RONR
- T. Bylaws Article 7-6, approve or reject non-substantive technical adjustments to the Bylaws
- U. Bylaws Article 8-1, appoint a Platform Committee
- V. Bylaws Article 9-3, grant or withdraw support for a candidate of statewide office

Note that entering into a regional representation agreement is not listed explicitly.

30. The specific powers of the Officers are explicitly defined in these locations:

- A. Constitution Article 5, Section 1-3, being full voting members of the Executive Committee
- B. Constitution Article 5, Section 1-4, having powers and duties prescribed in the Bylaws not inconsistent with the Constitution
- C. Constitution Article 5, Section 3-1, denying serving on Bylaws Committee
- D. Bylaws Article 2-1, duties of the Chair
- E. Bylaws Article 2-2, duties of the Vice-Chair
- F. Bylaws Article 2-3, duties of the Secretary
- G. Bylaws Article 2-4, duties of the Treasurer

31. Of specific note:

- Constitution Article 5, Section 1-4: *“The officers shall have such powers and perform such duties as are prescribed in the Party by-laws and are not inconsistent with the provisions of this Constitution.”*
- Constitution Article 5, Section 2-1: *“The Executive Committee shall be responsible for the control and management of all the affairs, properties, and funds of the Party consistent with its by-laws and any resolutions which may be adopted in Convention.”*
- Bylaws Article 2-1: *“The Chair shall be the chief executive officer of the Party, holding the powers of administration pertaining to the ordinary business affairs of the Party **and** such other powers as may be delegated by the Executive Committee.”* (emphasis added)

32. Note that “powers of administration pertaining to the ordinary business affairs of the Party” is a separate clause from “such other powers as may be delegated by the Executive Committee.” separated by the “**and**”, which indicates that the Chair has administrative authority over ordinary business affairs of the Party.

33. It is also clear that the Chair's "powers of administration pertaining to the ordinary business affairs of the Party" is a distinct subset of all of the business affairs of the LPWI; the rest of the business affairs fall to the Executive Committee until they delegate them.

34. Does entering into a regional representation agreement fall under "ordinary business," or is it a "such other power?"

35 The Petitioners claim the latter but offer no definitive evidence to that effect. The historical evidence they do offer, the Minutes of the 5/22/22 LPWI Executive Committee Meeting, is incomplete and offers zero insight as to whether the "New Business" of LPWI joining the then-Region 7 was added by the Executive Committee or by the Chair. The distinction matters:

- If the Chair added it on his own accord, then it is reasonable that the Chair could have concluded that either he felt it was "ordinary business" and wanted LPWI Executive Committee oversight, or that he (erroneously per the Constitution and Bylaws) felt it was a "such other power" to be delegated by the LPWI Executive Committee.
- On the other hand, if the LPWI Executive Committee added it, then it is reasonable that they felt it was within their delegated powers.

36. However, the 5/22/22 minutes indicate that a motion was made NOT for the delegation of that power to the Chair by the Executive Committee, but instead to simply join the region. Clearly both the Chair and the Executive Committee felt that such a delegation was not necessary, but likely for different and conflicting reasons. At a minimum, the need for such delegation does not appear to have been considered at that time. As such, the Minutes of the 5/22/22 LPWI Executive Committee Meeting are inconclusive as to intent of the vote, so they provide no help to the Petitioners.

37. Had the Executive Committee and the Chair felt that it was a delegated power to the Chair, then there should have been a motion and vote to delegate it; however, no such motion was made or taken. The inference by silence is then that there was no delegation required, and it then falls under "ordinary business." Even if it falls under "ordinary business," a delegation to the Chair would serve to only confirm the Chair's authority, creating a redundancy in the delegated power but also clarity. Better to state it clearly twice than implying it without stating it at all. Silence is not golden, and "two is one while one is none."

38. The minutes of the 5/17/20 LPWI Executive Committee followed a similar process of no delegation to the Chair, in this case a change from then-Region 6 to then-Region 3. The LPWI Executive Committee voted to remain in then-Region 3. However, that has no impact on the authority of the Chair to execute a regional representation agreement, because one had already been executed to join then-Region 3. As such, the Minutes of the 5/17/20 LPWI Executive Committee Meeting are also inconclusive as to intent of the vote, so they provide no help to the Petitioners. Also note the Petitioners provide no minutes of any 2020 meeting where LPWI joined Region 6. Was that done by the Chair, or by vote of the Executive Committee? The same can be asked for every time LPWI joined a region going back to 1973. There is simply a lack of evidence as to how those agreements were executed by LPWI, so the custom itself within LPWI is vague and inconclusive while the historical record is incomplete.

39. For clarity and precision, what is “ordinary business?”

40. “Ordinary Business” is not limited to regular day-to-day occurrences but instead is defined by consistent conduction within the scope of past customs and practices (see https://www.law.cornell.edu/wex/ordinary_course_of_business). A state affiliate entering into a regional representation agreement, albeit biennially, is clearly within the scope of past customs and practices, not just for LPWI but the entire Libertarian Party, as stated in the national Bylaws, and therefore falls under “ordinary business.” As such, per the Bylaws, entering into the regional representation agreement is by the LPWI Chair, and the LPWI Executive Committee lacks authority to override the LPWI Chair per the LPWI Bylaws without an amendment to said LPWI Bylaws. Delegation of authority that is stated in the LPWI Bylaws can only be amended or revoked by amending the Bylaws, or alternatively, given depth of definition by a standing rule. In this case, that means a standing rule defining explicitly what is “ordinary business” and what is not, instead of relying on vagueness and custom.

41. It should also be noted that certain items that could be considered “ordinary business” fall under LPWI Executive Committee purview as listed above. Those specific items were designated to the LPWI Executive Committee by the LPWI Delegates at Convention, setting them separate from the “ordinary business” of the LPWI that the LPWI Chair conducts. The LPWI Delegates also have full authority at their Convention to amend the LPWI Constitution and Bylaws to delegate specific duties to either the LPWI Chair or the LPWI Executive Committee, or both, or neither.

42. Entering into a regional representation agreement, while not a day-to-day operation of the Party, is still considered “ordinary business,” that the LPWI Chair is authorized to conduct. The LPWI Executive Committee has not established that entering into a regional representation agreement falls to the LPWI Executive Committee, nor do the current LPWI Bylaws support such an establishment without amendment.

43. The LPWI Executive Committee’s actions after 5/11/24 should also be considered improper.

44. LPWI Bylaws Article 3, Section 1, states: “The Executive Committee shall meet at least quarterly and the chair shall determine the times and places of their quarterly meetings and announce them three weeks prior to the meeting.”

45. Since the “Special Meeting” of 5/20/24 was held only 9 days after the 5/11/24 filing, and was for business specific to that filing, it is impossible to have properly given the three weeks’ notice for that meeting, unless the meeting was noticed before 4/29/24 and the LPWI Executive Committee are mind readers. As such, the meeting should be construed as being improperly held and the votes taken during it should be viewed as invalid.

RONR relation to LPWI Constitution and Bylaws

46. While the Constitution Article 5, Section 2-1 delegates “control and management of all of the affairs, properties, and funds of the Party consistent with its by-laws[sic]”, LPWI Bylaws Article 2, Section 1 delegates some of that authority to the LPWI Chair. (see above)

47. RONR 56:68-3 states: *“A general statement or rule is always of less authority than a specific statement or rule and yields to it.”*

48. The general statement is LPWI Constitution Article 5, Section 2-1, and the specific statement is LPWI Bylaws Article 2, Section 1 because it delegates from the broader LPWI Executive Committee to the specific LPWI Chair.

49. RONR 56:68-4 states: *“If the bylaws authorize certain things specifically, other things of the same class are thereby prohibited. There is a presumption that nothing has been placed in the bylaws without some reason for it.”*

50. A proper reading of the LPWI Constitution Article 5, Section 2-1 and Bylaws Article 2, Section 1 is that the LPWI Chair has been authorized to conduct “ordinary business” and other (unique, 1-off, extra-ordinary or non-ordinary) business falls to the LPWI Executive Committee to do themselves or delegate to the LPWI Chair or elsewhere. And that makes perfect sense as the extra-ordinary business, not routine or regular matters, are best handled by the full LPWI Executive Committee.

51. RONR 56:68-5 states: *“A provision granting certain privileges carries with it a right to a part of the privileges, but prohibits a greater privilege.”*

52. Again, a proper reading of LPWI Constitution Article 5, Section 2-1 and LPWI Bylaws Article 2, Section 1 is that the LPWI Chair has been granted the privilege to conduct “ordinary business” and other business falls to the LPWI Executive Committee to do themselves or delegate to the Chair or elsewhere. That also makes sense.

53. It should be noted that some of the powers listed above for the LPWI Executive Committee could be considered “ordinary business,” which creates a conflict in the LPWI Constitution and LPWI Bylaws as to what extent “ordinary business” can be conducted by the LPWI Chair. Specifically, the *de minimis* above items C, K, L, M, N, O, P, and R could be considered “ordinary business” based upon their frequency of occurrence as explained above. Yet those “ordinary business” activities are explicitly placed in the purview of the LPWI Executive Committee and thereby denied the purview of the LPWI Chair. According to RONR 56:68-4, the items of “ordinary business” reserved to the LPWI Executive Committee also prohibits items of “ordinary business” not listed to be reserved to the LPWI Executive Committee, so by Bylaws Article 2-1, those items fall to the LPWI Chair. That includes entering into a regional representation agreement, because that specific power was not reserved to the LPWI Executive Committee, nor denied to the LPWI Chair.

54. If the LPWI Executive Committee wishes to reserve the power to enter into a regional representation agreement, then the LPWI Bylaws should be amended to explicitly reserve to them

that power. Currently, the LPWI Bylaws do not, and as explained above, so that power then falls to the LPWI Chair as part of “ordinary business.”

Other Issues

Financial Obligations

55. Petitioners claim that the regional representation agreement imparts a “possible financial obligation” of the LPWI. Exactly what is that obligation, and where in the agreement is it specified?

56. The Agreement cites “Travel Compensation” as the potential obligation, which is dependent upon a request made by the Regional Representative. However, potential obligation is not an actual obligation. The Regional Representative may decline to make such a request, or the regions may instruct the Regional Representative to not make such a request because it would be denied. The cited section places the request of such an obligation in the hands of the regional representative and also provides multiple options for cost allocation. The cost itself is small for LPWI either way because of the distribution of a maximum of \$2000 amongst the 15 states in the region: for a double region with equal cost-sharing of up to \$133 per representative, and if divided by percentage of national sustaining members, it can be even less. Petitioners object to the spending because they haven't approved it. But that is a bridge not yet crossed; it is entirely possible to have the costs addressed at the time they are needed by donations from Party members, including the regional representatives and/or alternates themselves, or by other means, and not necessarily from an LPWI budget. As such, this complaint is not yet ripe for adjudication, even if the Judicial Committee could adjudicate it.

57. Petitioners may have a valid objection to this expenditure when it may come up, but not beforehand. It is certainly not a valid objection to the LPWI Chair entering into the regional representation agreement in the first place. Per the terms of the Agreement, LPWI may simply choose to opt out of participation to avoid paying any travel costs for representatives, then opt back in after the fact. It's a clear loophole in the Agreement that the LNC should close, but that is outside the scope of the Judicial Committee.

58. Further, per the Response from the Region 1 Representatives, *“In the original LNC Region One organizing meeting it was stated and agreed that the “agreement” could be zero if there were states that can't or don't want to contribute, and that the regional representative would decide if that was acceptable or not and consider if they wished to resign. Additionally, No financial agreement has been requested or created. Instead, the elected LNC Regional 1 Representatives have created a GoFundMe page and asked for donations from anyone who's willing to help with travel expenses for onsite meetings as evidenced below. Region 1 Representative Fundraiser link: <https://gofund.me/55bac1df>.”*

59. The actions of the Region 1 Representatives to obtain donations to cover the costs make the Petitioners' objection virtually moot.

60. A complaint about potential expenses obligated upon the LPWI that are not yet realized is not yet ripe for adjudication, and alternative means within the region and the affiliate exist and are being used to resolve the complaint if and when it becomes necessary to address it.

Roles of Affiliates in the Regional Agreement

61. A state not properly signing a regional representation agreement does not nullify the entire agreement between all of the other states that have also signed the agreement. It is not an all-or-nothing agreement. If a single state could nullify the agreement, then it would place that state in a position of vetoing the agreement made by the other state affiliates, and that single state has no authority to veto or otherwise dictate the actions of any other state affiliate, or their delegations as applicable, or even the national Party or the national convention Delegates, including their own, in any way whatsoever.

Opting Out of the Regional Agreement

62. Per the Agreement, a state may opt out from participation by request. Has LPWI made such a request? No, based on the fact that LPWI appears to be attempting to deny and invalidate the original agreement, it's unlikely. Such a request would admit acceptance of the agreement and make any such appeal moot. Also, by opting out, the expenses complaint above would be rendered moot.

Who Can Enter into the Agreement?

63. As currently worded in the first sentence of the Agreement, yes, the Agreement does give authorization from the LPUS to the state chairs, independent of the state affiliates, to enter into said Agreement, albeit indirectly, because it specifically states that the Agreement is made through the state chairs. However, it can be argued that the wording violates the national Bylaws, specifically Article 5, Section 5 when a state affiliate requires some approval from their Executive Committee, delegates, or other body other than the state chair. However, that's not an appealable issue to this Judicial Committee under Article 8, Section 2. Instead, the Judicial Committee suggests below to the LNC Secretary a means in the form to resolve that discrepancy.

Withdrawal from Agreement

64. The Agreement states: *"No state affiliate can withdraw if their withdrawal will cause the Region to total less than 10% of the national sustaining membership, or if the next 10% threshold is reached, below the highest 10% increment."* A withdrawal by LPWI from the region would cause the total to drop below the highest 10% increment (20% in this case), so withdrawal is prohibited. The only thing LPWI can do is opt out of participation. As such, LPWI has not yet exhausted all internal remedies.

65. LPWI cannot withdraw because the effect of such withdrawal would cause the region to lose representation on the LNC. If the effect of such withdrawal would not cause the region to lose representation on the LNC, then a withdrawal could be made in accordance with the terms of the regional representation agreement.

Recommendations to LPWI

66. The following actions are recommended for the LPWI:

- A. Combine the LPWI Constitution and Bylaws into one Bylaws document. See RONR 2:8.
- B. Amend said Bylaws to specifically address regional representation agreements to prevent future controversy. Silence is not golden.
- C. Amend said LPWI Bylaws to give the LPWI Chair discretionary spending of an amount not to exceed \$X. This will increase LPWI flexibility in their operations without bankrupting the bank

account. The problem is that the Chair is authorized to conduct “ordinary business” but not spend any money to do so, without approval by the LPWI Executive Committee. There needs to be a better balance there and not just a check (no pun intended) on power.

- D. If the LPWI still wishes to not be a member of Region 1, then they should exercise their option to opt out of active regional participation in accordance with the Agreement. Withdrawal is not an option because it would drop the Region below a next-highest 10% increment, per the Agreement itself, and that denies part of the representation of other states within the Region.
- E. For important votes, use roll call votes and reflect them in the meeting minutes.

Recommendations to LNC

67. The following actions are recommended for the LNC:

- A. Assuming this agreement form is used in the future, change the wording of the first sentence of the regional representation agreement from “through their State Chairs,” to “through their State Chairs or in accordance with their Bylaws”. This puts the onus back onto each state to develop their own processes to enter into the agreement independent of the agreement itself and does not infringe upon the autonomy of the state affiliates. It's also more consistent with the wording regarding “Any State Chair may further designate a representative to make decisions and be the point of contact for the purposes of this agreement unless express [sic] disallowed by their state bylaws” that is located farther down in the agreement.
- B. Under the same assumption, change the wording of the regional representation agreement regarding the Travel Compensation from “will enter into a separate agreement” to “may enter into a separate agreement.” (emphases added) While state affiliates should cover at least some of the travel costs of the regional representatives, making the agreement optional is much more flexible for all parties involved and also avoids a potential violation of Bylaws Article 5, Section 5. The regions themselves can sort out any conflicts, as they should.
- C. Under the same assumption, change the wording of the regional representation agreement to not make opting in and out of participation not be a revolving door for affiliates. This might best be accomplished by adding a minimum time period for opting out, or a minimum time period between occurrences of opting out.
- D. While currently each region has the flexibility to create their own agreement, it may be a good idea to have a standard agreement across all regions, or at least have standard base elements within it.
- E. Eliminate required in-person LNC meetings except for at the national Convention. In this modern post-COVID world, they simply aren't necessary any longer and can be done electronically. This also would eliminate the need for any travel compensation agreements. It also is less expensive to the LNC members and the LP.

Opinion of Mr. Kinsella, concurring in judgment only.

In re: Libertarian Party of Wisconsin Region 1 Agreement Dispute

Appellant: Libertarian Party of Wisconsin (“LPWI”) and Libertarian Party of Wisconsin Executive Committee and its signatories

Appellee: The National Committee of the Libertarian Party (“LNC”)

Background

The Bylaws of the Libertarian Party (<https://www.lp.org/bylaws-and-convention-rules/>) (“LP Bylaws” and “LP”) permit the LP to affiliate with state-level affiliate parties (Art. 5). The LP Bylaws establishes a National Committee (the LNC) to control and manage the affairs of the LP (Art. 7). The LNC is composed of (a) the four specified officers, (b) five at large members, (c) members representing affiliate parties with 10% or more of the total national party sustaining membership, and (d) members representing “representative regions” (Art. 7). A representative region is formed by the “mutual consent” of affiliate parties “every two years during a period beginning 90 days before the beginning of and ending on the second day of the national convention, and notice of new formations or dissolutions must be given in writing to the national Secretary prior to the close of the convention at which they take place.” (Art. 7) Once the LNC members selected from representative regions is selected, there is no mechanism to change this regional grouping until the next national convention two years later.

The LPWI Chair, Stephen Ecker, signed a 2024-2026 Regional Agreement for Region 1 (the “Region 1 Agreement”) on May 11, 2024. He then sent an email to the LP Secretary giving notice that LPWI had joined Region 1.

Members of the LPWI Executive Committee (“ExCom”) held a meeting regarding this matter on May 20, 2024; neither the District 1 Rep, Thomas Leary, nor his alternate, Joe Kexel, were present. All members present, except the LPWI Chair, disagreed with the decision to join Region 1. Following this meeting, according to Appellant/Petitioner’s Petition, “After the meeting discussing the lack of authorization, the LP Secretary was notified of the lack of authorization, and therefore non-consent of the agreement and the findings of the meeting.”

Subsequently, the LNC on May 23, 2024, passed a motion purporting to ratify the LP Secretary’s “acceptance” of the notification of the Region 1 Agreement, to-wit:

To ratify and adopt the Secretary’s acceptance of the Region 1 agreement with the states identified in her email announcement and their election of Mr. Adam Haman, Mr. Roman Garcia as Representatives and of Mr. Andrew Chadderdon as first-ranked alternate and of Mr. Nick Shawhan as second-ranked alternate

In its Petition, Appellant claims that its notice to the LP Secretary was “disregarded” and filed this appeal, claiming that LPWI’s chair was not authorized by the LPWI Bylaws to sign the Region 1 Agreement and demanding

“removal from Region 1 along with the removal of the applicable “party sustaining membership” from the region, along with the removal of a representative if the 10% of party sustaining membership threshold is not met after the removal of Wisconsin from Region 1, per LNC bylaws.”

Parties

As pointed out in the Response filed by Appellee/Respondent LNC, the wording of the Petition is unclear as to who the Appellant is supposed to be, as it mentions only “Affected Parties” but not the Appellant. In particular, the Petition names as Affected Parties:

- Region 1 Representatives: Adam Haman and Roman Garcia
- Region 1 Alternates: Andrew Chadderdon and Nick Shawhan
- The following state affiliates:
 - AK, AZ, CO, HI, ID, KS, KY, MI, MN, MT, NE, NM, NV, OR, WI

As correctly pointed out by Appellee in its Response, the true Appellee here can only be the LNC, as the actions of the Region 1 LNC members cannot be appeal to this LP Judicial Committee (“JC”). It is the actions (or inactions) of the LP Secretary, and/or the LNC itself, in “accepting” notification of the Region 1 Agreement in and “disregarding” the LPWI ExCom’s “notif[ication] of the lack of authorization,” that the Appellant complains about in its Petition. Thus, I will treat the LNC, which includes the LP Secretary, Caryn Ann Harlos, as the Appellee in this opinion.

Discussion

Formation of Region 1

As I see it, the fundamental question here is whether or not LPWI has joined other state affiliates to form Region 1 by “mutual consent,” with notice of the formation of this region being given in writing to the LP Secretary.

Appellant argues that the LPWI Chair did not have authority since this is not ordinary business. I disagree. Every two years state affiliates have a window in which to form a region with other state affiliates. It is customary for the state affiliate’s chair to negotiate and enter these agreements on behalf of the state affiliate and to notify the LP Secretary of same. During the hearing discussing this issue, the Appellant’s representative Michael Chianese conceded that the LPWI Chair would have been authorized to enter a regional agreement to join Region 6, since it would be viewed as a “renewal” since LPWI had previously been part of Region 6. I should note that Appellant’s representative Phil Anderson stated that Mr. Chianese’s comment here was just his opinion and that it is not necessarily correct that the LPWI Chair could have agreed to enter Region 6.

Our task here is to interpret the *LP Bylaws as they pertain to the constitution and membership of the LNC*. It is my view, for purposes of interpreting the LP Bylaws, that state affiliate chairs do have the authority to enter into regional agreements that trigger the provisions in LP Bylaws Art. 7, unless the state affiliate’s bylaws, or a specific resolution by the board or ExCom, specifies otherwise. It is my view that a court applying standard contract law principles would find that the LPWI Chair has actual

authority to enter regional agreements;¹ I also believe this result would be compatible with the libertarian view of contracts.² That is, that a contract has actually been formed. No resolution by the LNC, or decision by the JC, or resolution by the LPWI ExCom, can change this.

Thus, absent such limitation on the LPWI Chair's authority, for purposes of construing the LP's Bylaws with regard to determining the existence and composition of regional LNC members, a state affiliate's chair entering into a regional agreement with other state affiliates, and notifying the LNC of same, operates to form the subject region with the concomitant right to appoint one or more LNC members, depending on its size. In this case, when LPWI joined Region 1, on May 11, 2024, this put the region over 20%, so that Region 1 can select two members of the LNC.

Any state affiliate wishing to change this default assumption may change its bylaws or make a particular resolution defining its chair's authority in a particular case, and notify the LNC Secretary of same. This was not done here. Thus, the LPWI Chair, for purposes of interpreting the LP Bylaws, having the authority to bind LPWI to the agreement forming Region 1, and the authority to notify the LP Secretary of same, joined the LP's Region 1. This had the effect of giving Region 1 the right to select and place two regional members on the LNC. I would like to emphasize here that determining whether a region is formed is based primarily on an interpretation of the LP's own Bylaws, which is what governs the composition of the LNC.

Financial Obligations Argument

Appellant argues that the LPWI Chair may not obligate the LPWI financially without approval of the LPWI ExCom, and that since the Region 1 Agreement (unlike other agreements such as the Region 6 agreement) contemplates each member of the region to help pay for regional representatives' travel costs. However, the Region 1 Agreement does not actually obligate any region member to fund such travel, as the agreement merely contemplates a possible future agreement could be entered into—which, no doubt, would need LPWI ExCom approval.

Financial Obligations Argument

Appellant argues that in the May 20, 2024 ExCom meeting, "it was confirmed unanimously (other than the chair) that the chair had no authorization to sign the agreement, that the chair's actions were against the bylaws, and he did not have consent of the ExCom. He was also directed to withdraw."

There are two problems with this argument. First, this meeting was called with only one day's notice; the LPWI Bylaws require three weeks' notice (Art. III, 1.1). According to RONR, as pointed out by Appellee, this notice requirement can be waived only if there are no absentees. However, as noted above, neither

¹ An argument could be made that if the LPWI Bylaws do not provide the state chair with actual authority to enter into regional agreements, he has apparent authority to do so. I do not need to reach this issue here as I believe he had actual authority.

² I discuss various views of contract in "A Libertarian Theory of Contract: Title Transfer, Binding Promises, and Inalienability," in *Legal Foundations of a Free Society* (2023; www.stephankinsella.com/lffs).

the District 1 Rep, Thomas Leary, nor his alternate, Joe Kexel, were present. Thus, the LPWI ExCom did not revoke or circumscribe the LPWI Chair's authority with regard to entering regional agreements. To my knowledge, LPWI has still not, to this day, in any valid resolution or meeting, changed its bylaws or otherwise attempted to limit its chair's authority in this regard.

Second, the Region 1 Agreement by its terms does not permit LPWI to withdraw since that would put the region under 20%. As stated in the Region 1 Agreement:

This agreement shall become effective upon filing with the Secretary of the national Libertarian Party a number of copies of this agreement signed by Regional Chairs with enough national party sustaining members to form a representative Region. After this agreement has come into effect and subject to any deadlines imposed by the national Party Bylaws for final formation of a representative region for a term, a state affiliate can only join or withdraw with a majority consent of all of the other state signatory affiliates through their State Chairs. No state affiliate can withdraw if their withdrawal will cause the Region to total less than 10% of the national sustaining membership, or if the next 10% threshold is reached, below the highest 10% increment.

The Region 1 Agreement was already effective when LPWI joined. It could only have withdrawn with majority vote of the other parties; this did not occur. Moreover, once Region 1 hit 20% on May 11, 2024,³ it could not withdraw at all since this would cause Region 1 to lose one of its two LNC representatives.

Thus, LPWI, though its chair, did join Region 1 and the chair did notify the LNC Secretary, triggering the formation of Region 1 having two LNC members.

LNC Actions in the Formation of Region 1

Notice also that this status—of there being a Region 1 with two LNC members—is not the result of any *action* committed by the LNC or even the LNC Secretary, so it is not even clear what actions of the LNC the Appellant is appealing. It is true that the LNC passed a resolution “To ratify and adopt the Secretary’s acceptance of the Region 1 agreement,” but it is not quite clear what this resolution means or there was anything to “ratify.”⁴ The LP Secretary did not *do* anything; rather, the LPWI Chair *sent her a notice*. In my view, the LP Secretary did nothing reviewable and her action did not need any “ratification,” as it was not an action. It was a fact: she received/was sent a message, a notification. Even if the LNC had resolved *not* to “ratify” this fact, it would still be a fact: that the LP Secretary had received a notification of some state affiliates being parties to a regional agreement. The LNC resolution was unnecessary and had no effect.

³ Appellee’s Response on p. 3 states that when the LPWI Chair signed the Region 1 agreement, this put the region over 20%. On p. 4 the Response states that the Region hit 20% on May 20, 2024. Whichever date is correct, it is not contested that LPWI withdrawing from the region agreement would cause Region 1 to lose a representative on the LNC.

⁴ I also agree with the reasoning of Mr. Seebeck, in the section of his Opinion captioned “Is Ratification Necessary?” (¶¶21 et seq.)

In the LP Secretary’s reply to the May 11, 2024 email notifying her that LPWI had joined Region 1, she wrote: “I confirm receipt and the addition of Wisconsin to region 1 for the 2024-2026 term.” This response did not create Region 1. What created Region 1 with all its current state affiliate members was (a) LPWI joining Region 1, and (b) the LPWI Chair notifying the LP secretary of same. Region 1, with its current membership, existed from this moment by virtue of the LP Bylaws.⁵ Even if the LP Secretary had *not replied* to the May 11, 2024 email from the LPWI Chair—if she had not “accepted” the notification—Region 1 would still have been formed, since she would have been notified. And even if the LNC had not ratified the LNC Secretary’s “acceptance” of the notification of Region 1, Region 1 would still have been formed. In short, it seems there is nothing that the LP Secretary, or the LNC, *did* that caused Region 1 to form, so again, it is not clear how there is any action here to contest or appeal.

Requested Relief

Appellant requests several actions by the JC, including “removal from Region 1 along with the removal of the applicable “party sustaining membership” from the region.” As pointed out by Mr. Seebeck in his Opinion (¶10), these two requests are duplicative. In any case, the JC cannot do this, nor could the LNC do this, as it is the LP Bylaws that determine who are members of the LNC and what regional representatives are its members. The LP Secretary cannot undo or pretend that notice was provided to her of the formation and constitution of Region 1. LPWI joined other state affiliates to form Region 1; this triggered the existence of two LNC members that can be appointed by the state affiliates who are parties to this region agreement, according to its terms.

Thus, the LNC itself at present consists of a number of members including the two Region 1 members. According to the LP Bylaws the LNC’s constitution in terms of number of members is now fixed until the next convention and cannot be changed by any action of the JC or LNC.⁶ If the LNC were to try to change the constitution of Region 1 by removing LPWI and reducing Region 1’s representation on the LNC, this action would violate at least the rights of the remaining Region 1 state affiliates and would be appealable to the JC since the LNC has no authority to change its own membership in violation of the very bylaws that define and authorize it. LPWI did join Region 1 and this fact cannot be undone by the JC or the LNC.

Ruling

⁵ To be clear: it is my understanding that Region 1 existed before being joined on May 11, 2024 by LPWI, but it at that point would be entitled to only one member on the LNC. After LPWI joined, Region 1 included the previous state affiliates and also LPWI and now had two members of the LNC. After the last state affiliate to sign, LPMN, on May 20, 2024, Region 1 also included LPNM and still had two LNC member representatives.

⁶ Even if a state affiliate’s affiliation status were to be revoked under LP Bylaws Art. 5.6—or if a state affiliate were to disaffiliate, although the LP bylaws do not seem to contemplate a mechanism for voluntary disaffiliation—it does not appear that the number of representatives from any representative region already formed would be reduced or affected. Thus even if LPWI were to voluntarily disaffiliate (if that is even possible) or have its affiliation status revoked, Region 1 would still have two members on the LNC, until the next convention.

For the foregoing reasons, I vote to **deny** the relief requested by Appellant and to recognize the existence of Region 1, including LPWC, and the right of Region 1 to select two members to serve on the LNC.

Opinion of Mr. Krawchuk, concurring in judgment only.

Appeal Claim

The Libertarian Party of Wisconsin's (LPWI) participation in the Region 1 was not authorized, per the LPWI bylaws, which means that the regional agreement is null and void, therefore it was not a consensual agreement needed per the Libertarian National Committee (LNC) bylaws.

Relief Sought

LPWI seeks to void the LNC decision of May 23, 2024, to ratify the Region 1 Agreement, thereby relieving LPWI of any responsibilities or benefits associated with Region 1 membership.

Standing

Petitioners has provided 135 unconfirmed signatures of credentialed national convention Delegates. 117 of them are confirmed as credentialed Delegates. 10% of 997 credentialed Delegates is 100. Therefore, the signature threshold has been met in accordance with Article 7, Section 12 of the national Bylaws.

Jurisdiction

Jurisdiction for voiding any LNC decision falls under Article 8, Section 2, subsection d of the national Bylaws.

Background

The Region 1 regional representation agreement was signed by the LPWI Chair on May 11, 2024, and it was filed with the LNC Secretary the same day.

The signed regional representation agreement states: *"This agreement shall become effective upon filing with the Secretary of the national Libertarian Party a number of copies of this agreement signed by Regional Chairs with enough national party sustaining members to form a representative Region."*

According to LPWI, the LPWI Chair did not have the authority to sign the agreement. Whether true or not, any questions regarding internal affiliate operation is outside the jurisdiction of the national Judicial

Committee. The fact remains that the LPWI Chair did sign the agreement, and the national bylaws do not require any further verification than that for inclusion in a Region.

Ruling

Given that all requirements outlined in the national Bylaws and the regional representation agreement were met, the requested relief is denied.