

IPR comment by Bill Hall (JC member) on August 27, 2011 at 10:13 am: For me, some of the most important indicia of who the LP's current affiliate is in Oregon, pending future negotiation or litigation among LPO members, are:

The criteria listed by Mr. Hall in 2011 cannot be applied here, where 2 board members were granted the authority to overrule the will of the delegates and to essentially steal the party from its members.

(a) Which group is recognized by the State as having ballot access. (Wagner's group)

According to Delaware law, as long as a minor party's registration totals 0.1 percent of total registration each year, the party will remain a recognized minor party. Registered Libertarians meet the requirement with our 2173 registered voters getting us closer to 0.2 percent. The department of elections requires the party Secretary and Chairman to validate a candidate by signature. Since there has not been an election or a candidate put forth since October 1st, candidate sponsorship has yet to be litigated in court. The Secretary of State is bound to make a determination within 10 days of receiving conflicting certificates of nomination, which has not yet occurred.

(b) Which group has possession of the property of the LPO (funds, websites, state mailing list). (Wagner's group)

A fraudulent board has absconded with the members' money and their online assets. Moreover, either the LNC is bound to recognize duly elected boards and the will of the affiliates' delegates (barring evidence and an investigation to the contrary) or it is not. While the fraudulent board controls the assets, that is no indication of rightful ownership.

(c) Which group in a more general sense (campaign finance filings, contracts, etc.) is the LPO under State law. (Wagner's group)

In terms of the third criterion, we reject any notion that the JC should rely on the opinion of an agent of the state to determine the rightful affiliate. Because the fraudulent board was able to go to the Commissioner of Elections office and operate through the past Treasurer, McVays's mother, all the while misrepresenting what has occurred, does not constitute something legal or procedurally sound. That said, we understand from our conversations that the Commissioner of Elections recognizes that something is amiss within the Party. They insist their office is only ministerial in nature, but that upon receiving a conflicting Statement of Organization they would submit the issue to their legal counsel for an opinion on how to move forward. The officer who controls this CoE account is the state committee's Treasurer. Through the disciplinary process outlined in Roberts, LPD members recently suspended the rights of the elected Treasurer (Mary Pat McVay), and the LPD board recently elected a Treasurer pro-tem (Carter Hill). He will be filing an updated Statement of Organization with the CoE in the near future, but it doesn't guarantee a decision by that office.

- 1. (Part 1 of Q1) Please discuss each of the matters above in detail to clarify which group controls these things.***
- 2. At the hearing you seemed to avoid directly answering the above question. However, you tried to provide some context of the reason many of these things were not controlled by your group. Specifically you claimed: a) Will McVay controlled internet assets prior to the split and continued***

to control them, b) Will McVay's mother was the party treasurer and controlled financial assets such as bank accounts and campaign finance filings prior to the split and continued to control them. Please confirm and elaborate on this and note above which assets specifically were controlled by Will McVay or his mother prior to and after the split.

The information outlined below is also intended to answer Part 2 of Q1 Where two of these exist, which was in continuity with the Libertarian Party of Delaware before this controversy (e.g., same website URL)?

1.a Ballot Access

Answered in item (a)

1.b.1 – 1.b.3 Bank Accounts/Credit Cards/PayPal

Sole access to all financial accounts rest with Mary Pat McVay, as far we as know. At no time since 2016 was Chairman Hinds or immediate past Chairman Goward privy to any bank statements or other financial documentation. Efforts to draft a Business Continuity Plan included specific requests of the Treasurer that she refused to answer or provide related documentation. Thus, the duly elected board knows very little about the financial situation of the LPD, and the same disparity of understanding existed prior to the election of Chairman Hinds and Vice-Chair LePore.

Of note is that Brandi Kerchevall (who was Kent County Board Representative at the time of her motion) recently moved to sequester LPD funds and to authorize the receipt of unspecified loans to the party, the motion appeared to be adopted by the fraudulent board and no additional information is available on the state of the party's accounts. As note in Item (c), the LPD's Treasurer pro-tem will be attempting to gain control over party's finances by securing a CoE approved Statement of Organization and submitting it to the appropriate financial institution once identified.

1.b.4 Website

The duly elected board members other than McVay, having been denied any access from the time spanning the June convention until the takeover in October, were never permitted to update or change the website at lpdelaware.org. As noted in Appendix 3 of Exhibit A provided in December to the JC, McVay claims private ownership of the website and claims sole authority to manipulate this and other assets. We have included several of those screen shots here as well.

Further, McVay claims to license them to the party as a function of his role as "Webmaster". However, that contract gives no indication of a licensing agreement nor any reason to believe he should have sole administrative access. A full review of party records demonstrates no licensing agreement, and interviews with immediate past board members affirm that no licensing agreement exists. Exhibit A pages 14- 17 provide screenshots of his claim of private ownership of LPD assets and a copy of his contract.

In November, the duly elected board initiated a website at lp-delaware.org in order to have a public facing method for outreach, posting of important information, and sharing of bylaws and platform. While this is not the website controlled continuously by the LPD over a series of years, is the website operated by the board that was elected by the membership.

1.b.5 – 1.b.6 Facebook, Twitter

The LPD *had* a Facebook page, a Facebook group, and a Twitter account that appear to still be operated by the fraudulent board. McVay states that because he initiated these accounts he owns them privately. As mentioned in 1.b.4 above, a thorough document review demonstrates no such agreement. While he

was under contract as the webmaster, there is no mention of social media duties, no indication that he privately owns the party assets, and no reason to have sole administrative access. He refused all other board members, including Chairman Hinds, administrative access to these accounts.

The LPD now has a Facebook Group so that information can be shared with Libertarians in Delaware.

1.b.7 and 1.b.8 No Instagram or Slack exists, as far as we know.

1.b.9 Discord

The LPD had a Discord server, administered and controlled solely by McVay. In accordance with his behavior regarding every other state party asset, he limited access to himself.

1.b.10 No other social media exists, as far as we know.

1.b.11 – 13 Google Group, Electronic Mailing Lists, Other Assets

No administrative access was ever shared with the Chair or Vice-Chair for the Google Group or any existing electronic mailing list. Chairman Hinds lead an attempt to better understand the assets of the party with a Business Continuity Planning process, but his attempts were thwarted and responded to with inaction and a refusal to share information.

Note: Regarding the matters listed above in 1.b.4 – 1.b.13, we are providing several screenshots that detail the private ownership (and thus, continued unfettered access) of online assets. However, we would refer you back to exhibit a submitted with our original appeal for a full accounting of the issues with electronic assets and McVay's claim of private ownership.

Will McVay Today at 6:23 PM
It really does though

Dylan Griffith Today at 6:26 PM
Your webmaster contract is not inclusive of social media, even without the policy violation you are still refusing the board access to it's property. I've been trying to work with you on things but I think this is an area where you are wrong.

Will McVay Today at 6:30 PM
Retaining administrative control over the social media assets operating under the party's name is absolutely within the scope of my duties
Always has been
And the executive committee has access
They have the ability to publish posts, which is the policy

@Will McVay Retaining administrative control over ...

Dylan Griffith Today at 6:32 PM
It is definitely not in your contract.

Will McVay Today at 6:32 PM
Such as it is

@Dylan Griffith It is definitely not in your contract.

Will McVay Today at 6:34 PM
It is.

Dylan Griffith Today at 6:35 PM
Even without the policy, they are the party's property and the party should have access to them. I don't want to argue with you here man, the POO is for the [@State Chair](#) to rule on now. You and I aren't going to accomplish anything.

Will McVay Today at 6:35 PM
They're the party's property? How do you figure that?
The name is the party's property, for sure

The name is the party's property, for sure

@Will McVay They're the party's property? How do...

Dylan Griffith Today at 6:36 PM
The Facebook is a verified page, who else's property would it be?

Will McVay Today at 6:36 PM
Who do you think verified it?

Dylan Griffith Today at 6:36 PM
Facebook

Will McVay Today at 6:36 PM
Me.

Dylan Griffith Today at 6:37 PM
You verified with Facebook that it was the "authentic presence" of the LPD

Will McVay Today at 6:37 PM
The verification is the party's property
Which it is

Dylan Griffith Today at 6:38 PM
So you are saying that because you created these pages, they belong to you alone?

Will McVay Today at 6:39 PM
I created them on my own initiative and have been an admin continuously since then. Before there was even a contract at all

Dylan Griffith Today at 6:40 PM
Who owns the page and group?

Will McVay Today at 6:40 PM
I do. They're licensed to the LPD.

3. You claimed (contrary to the clear language of the bylaws) amendments to the bylaws by the state committee can only make scrivener's changes (spelling, grammar, make wording clearer) rather than substantive changes, whereas amendments to the bylaws by the state convention can make substantive changes. Is that correct? Was that the tradition? Can you provide examples from the Libertarian Party of Delaware's history?

The omission in LPD bylaws of specifically spelling out this very important caveat which would protect the best interest of the members is unfortunate. These are the types of protections that the duly elected board sincerely hoped to be able to put into place at the appropriate opportunity, when members could weigh in fully. That being said, we do maintain that the practices of the LPD have for a long time honored the idea that substantial changes are made by the membership, at convention.

In 2017/2018 an attempt was made by an outside group to take over the Libertarian Party of Delaware. Due to the familiarity of the board and the active members, prior to this attempted takeover, meetings and conventions were conducted informally with no parliamentary guidance or procedure. While the board had no mechanism for discipline in the AoA/Bylaws, it referred to Robert's for guidance in the immediate term for dealing with the individuals trying to take over the party, and notice was given prior to convention, that substantial changes were proposed to our governing documents. The AoA/Bylaws changes were adopted by the Convention Body during this time. Bylaw 4 was adopted specifically to prevent Mr. McVay (et al), from doing what they did, with the faulty presumption that Bylaw 4 was protected from the Amendment provisions in Bylaw 5, by RONR 45:7 – In any event, no action of the board can alter or conflict with any decision made by the assembly of the society, and any such action of the board is null and void.

Regarding the understanding of the board and the 'tradition' followed by the board regarding making changes to the AoA/Bylaws, for several terms now the understanding of parliamentary procedure has been limited, and from a parliamentary perspective, faulty. The philosophical view of the role of the Board was that the Board was a subordinate body to the Convention, and as such, could not contravene the will of the Convention. Considerations regarding AoA changes were infrequent over the four year period, and when considered, while not 'scrivener's' changes, were limited in scope to how the board conducted business, particularly as it pertained to conducting Party business in an online, ad-hoc format between our quarterly meetings, to address legislative bills, executive orders, etc. This philosophical mindset was continued by Mr. McVay and the AoA committee in the lead up to the AoA and Bylaw changes considered by the Board and the 2021 Convention; organizing the suggested changes in a way that the scrivener's changes would be noticed and considered by the Board ad-hoc, non-substantive changes at the quarterly Board meeting prior to convention, with major changes, including changing the number of board members and how county representatives are allocated, to be decided at Convention.

While we understand the question, certainly the ousting of three duly elected board members by two county chairs could never conceivably meet the benchmark of fair or ethical in the absence of the membership. In fact, there are very basic rights that LPD members should be able to expect. Among those is the opportunity to speak to their county representative (each of whom is on the state board) to weigh in on motions that are before the board, especially ones with a 30 day requirement specifically so that member voices can be heard. This can't happen when bylaw changes are intentionally hidden from members. It stands to reason that the McVay co-conspirators see membership as an obstacle and that's why they have excised them all from the party.

4. If the state committee were allowed to make substantive changes to the bylaws by a majority vote and if such bylaws changes were properly noticed, what would prevent the McVay group with 5/9 of the state committee from passing bylaws changes over the objection of 4/9 of the state committee (and subsequently using such bylaws changes to remove state committee members) in the future?

We are grateful that you recognize the change was not properly noticed, and while answering this question asks that we provide a hypothetical answer, we are happy to render an opinion.

- It is conceivable that with light shed on the topic and a full conversation by a state board, members who voted "yay" on the improperly noticed change may have had a change of heart when they understood the facts and the implications of their actions. Surely, not all five of these members

understood that the actions they took would ultimately lead to over 2000 members being kicked out of the Libertarian Party.

- The bylaw change was not only obscured from half of the State Board, but also from members. It is reasonable to believe (given the volume of petitioners) that the general membership would have cautioned the conspiring State Board members sufficiently to move them to oppose this change. It is also a fact the majorities in two of our three counties did pass resolutions condemning the actions of Mr. McVay and the board members that supported his actions.
- It is entirely conceivable that in the absence of the abysmally disrespectful environment and general chaos offered by the McVay group, the proposed bylaw change would never have been adopted as we would have been at a ten-person board as our secretary likely would not have left.
- Regarding your question about the future, the best way we can avoid the problems of the past is to have a board with transparency, shared access to assets, and to build the party instead of making it smaller. In regard to transparency, three of the McVay five have been investigated, charged, and disciplined by the delegate membership of Kent County. The investigation and trial found the three Kent County officers to be guilty of a series of charges related to their misconduct. The trial manager and immediate past Chair, Sean Goward, has filed a brief detailing this process. The McVay five are currently under investigation facing charges like those brought forth by the Kent County affiliate at the state level. We have provided in the trial folder the numerous petitions sent to Chairman Hinds calling for the investigation of these co-conspirators.
- Once elected, Chairman Hinds asked the Board to cease impromptu ad-hoc meetings that were impossible to prepare for and unfair to any member having plans at any given time. He requested that the Board reserve its business for scheduled monthly meetings. All ten of our board members working together devised a schedule to meet the fourth Monday of each month which was abided by through September.
- Our AoA clearly states that it yields to Roberts what is not explicitly called out in the AoA itself. Specifically, these documents do not provide guidance for investigation or discipline and only provide the mechanism for the actual removal (4/5ths vote). Among the most important implications of this is that officers can only be removed for cause, and only after an investigation, charges being preferred, and a trial. None of this was properly provided to the three board members ousted in a matter of five minutes. Our AoA and Bylaws are silent on the process, providing only the threshold to be met for removal. (<https://www.lp-delaware.org/165-2/>)

5. Does your group believe the LNC has the authority to recognize both the Hinds and McVay groups and send both entities data dumps?

No. They may only recognize one Delaware affiliate in accordance with LP bylaws and they must always act to protect the credentialed convention body. The CRM access and related data dumps should be reserved for the board elected by the membership.

There can be no question about what the membership wants. Not only were their voices heard at convention, but a petition signed by a majority of the members credentialed at the LPD 2021 convention asked for recognition of the duly elected state board and was offered into evidence for the November meeting. If the LNC had taken the proper action in November, the motion of December 5th and the McVay appeal would have been moot.

6. Does your group believe the LNC has the authority to demand that both the Hinds and McVay groups attempt to hold a mass meeting to elect new officers?

No, nor have they demanded a mass meeting to elect new officers but have “encouraged a general membership meeting to be held to determine which leadership is the rightful leadership of the Libertarian Party of Delaware.” Our position is that recognizing the duly elected board on November 21 was the only authorization held by the LNC, and that their attempts to play the middle are a reflection of both their lack of understanding of their own bylaws and a blatant display of the inability to make difficult decisions.

7. Does your group believe the LNC has the authority to cease recognizing whatever the legitimate group is by a majority vote rather than a 3/4 disaffiliation vote?

While the phrasing of this question is unclear, we would question any move by the LNC to cease recognition of a legitimate board. However, that is exactly what happened on November 21. Our position is that refusing to recognize a legitimate, duly elected affiliate board, with no investigation by the LNC, is a de facto disaffiliation by the LNC. If it isn't a de facto disaffiliation, then what's to stop the same type of hostile moves in every other state, ultimately leaving the LNC with no ability to recognize any state level affiliates? We can't imagine the LNC would argue they have no authority to determine their party structure below the federal level and would instead leave that up to at least 50 government jurisdictions to determine – assuming they even do take any action. We did not want to be disaffiliated, but we effectively were. We are seeking remedy through the Judicial Committee to fix this error committed by the LNC and force the LNC's hand to either recognize the duly elected LPDE board, acknowledge disaffiliation of LPD as of 11/21/2021, or conduct an in-depth investigation to determine the legitimate board of the LPD.