

Members of the Judicial Committee –

One of the downsides of being a deliberative body is that the ability to reach consensus in a timely manner can be difficult.

As such, I submit this amicus to explain my *persona* thoughts on the matters asked by the JC. This document goes beyond what would have otherwise been potentially submitted by the LNC, and expands upon the exploration and discussion that a party is made up of members; not of titles, assets, or state filings. To reiterate: *this document does not speak for the LNC.*

The core of this document is structured as a response to the follow-up requested by Dr. Moulton, but the answers to Ms. Mattson's follow-up question enumerated as 2e is also found within this document, as well; members should decide the direction of the Delaware party, and the LNC should simply recognize the decision of those members of our LPDE state-level affiliate.

Please excuse any typographical errors, as this was written in a relatively short period of time.

Thank you for your time and consideration.

Sincerely,

Ken C. Moellman, Jr., speaking on my own behalf

Introduction

Dr Moulton asked for follow-up information regarding party assets, which in party includes:

- (a) *Which group is recognized by the State as having ballot access.*
- (b) *Which group has possession of the property of the LPO (funds, websites, state mailing list).*
- (c) *Which group in a more general sense (campaign finance filings, contracts, etc.) is the LPO under State law.*

The response to this line of questioning requires additional analysis: Is an organization made up of its assets or its members?

The original LNC motion, and their response to the JC, points to membership being the one to ultimately decide the future of LPDE. Members should always be the ultimate deciding body. Under Roberts Rules of Order, and parliamentary law generally, a board exists to represent its members or delegates from the previous convention until the next convention¹.

*“Parliamentary procedure enables the overall membership of an organization — expressing its **general will through the assembly of its members** — both to establish and empower an effective leadership as it wishes, and at the same time to **retain exactly the degree of direct control over its affairs that it chooses to reserve to itself**. ... In this connection, there is an underlying assumption of a right that exists even though it may not always be prudent or helpful for it to be exercised. **Each individual or subgroup has the right to make the maximum effort to have his, her, or its position declared the will of the assembly to the extent that can be tolerated in the interests of the entire body**. ... Fundamentally, under the rules of parliamentary law, a deliberative body is a free agent—free to do what it wants to do with the greatest measure of protection to itself and of **consideration for the rights of its members**.”²*

An organization is not its leadership, it is its members. The members construct the board through adoption of a governing document outlining the structure of its leadership. But those members do not give up control of the organization through this process.

*“A board, in the general sense of the term, is an **administrative, managerial, or quasi-judicial body of elected or appointed persons** that differs from several of the other principal types of deliberative assembly as follows:*

- a) boards are frequently smaller than most other assemblies; and*

¹ Robert's Rules of Order, 12th Edition; Section 1:22-23, “The Board”

² Robert's Rules of Order, 12th Edition; “Principles Underlying Parliamentary Law”

*b) while a board may or may not function autonomously, its operation is determined by responsibilities and powers delegated to it or conferred on it by **authority outside itself.***³

This concept of servant leadership is not new. RONR references early traditions as the root of what is now parliamentary law.

*“The holding of assemblies of the elders, fighting men, or people of a tribe, community, or city to make decisions or render opinions on important matters is doubtless a custom older than history. The ancient Athenian historian Thucydides (c. 460–400 B.C.), in his History of the Peloponnesian War (between Athens and Sparta), cites numerous cases of determinations by the peoples of cities being decided in assembly by vote. ... our own tradition of parliamentary process may be traced to ways of life in Anglo-Saxon tribes before their migration to the island of Britain starting in the fifth century A.D. ... it is supposed that **freemen were accustomed to come together in the “Village-moot,” to make “bye-laws” for their village and to administer justice.** ... what we now know as Parliament came about during the thirteenth and early fourteenth centuries. ... The earliest parliament clearly identifiable as of this character was held in 1258.”*⁴

Our own structure confirms that membership is a critical component. Our organizations hold conventions – National on a bi-annual basis and most state-level affiliates on an annual basis – for membership to express its will.

Our affiliation of state-level organizations, under Bylaw Article 5.2, states the criteria for becoming a state-level affiliate:

The National Committee shall charter state-level affiliate parties from any qualifying organization requesting such status in each state, territory, and the District of Columbia (hereinafter, state). Organizations which wish to become state-level affiliate parties shall apply for such status on a standard petition form as adopted by the National Committee, which petition shall be signed by no fewer than ten members of the Party residing in the appropriate state. Affiliate party status shall be granted only to those organizations which adopt the Statement of Principles and file a copy of their constitution and/or bylaws with the Party Secretary.

In that bylaw, there are three criteria to become a state-level affiliate. In the pages that follow, this bylaw is examined. Further analysis is then provided after.

³ Robert's Rules of Order, Newly Revised, 12th Edition, Section 1:22, “The Board”

⁴ Robert's Rules of Order, Newly Revised, 12th Edition, “Introduction”

Bylaw 5.2: Qualifying organization clause

*The National Committee shall charter state-level affiliate parties from **any qualifying organization** requesting such status in each state, territory, and the District of Columbia (hereinafter, state).*

What is a qualifying organization? Is it more than what follows in the next two sentences of the article? Does it *require* paperwork from the state? In my own experience, I would say that it does not.

LPKY did not file paperwork of any sort with the Kentucky Secretary of State from 1976 until 2017. LPKY did not file paperwork with the Kentucky Registry of Election Finance until 2012. The IRS TIN for LPKY was lost from at least 2007 until 2009. Yet, LPKY existed from at least 1974 per Articles of Incorporation from that era that were contemporaneously revived and made current in 2017. The only reason LPKY made the various paperwork current was due to issues with opening bank accounts after increased enforcement of the “Know Your Customer” rule.

While lacking official state recognition as an active organization, LPKY placed candidates for President on the ballot in 2008⁵, 2012⁶, and 2016⁷ in conjunction and cooperation with the LNC, using LNC funds for ballot access and LPKY volunteers to assist in the effort. And records show that similar processes were followed prior to 2008.

As far as I am aware, there was never a question of whether the LNC recognized LPKY as its affiliate for decades without any active state-level paperwork, and transferred assets and resources to that party during that time.

From 2016 to 2019, internal turmoil threatened to split LPKY, in a similar situation as we see today in Delaware. An inadvertent loophole existed in the rules and in 2017 the state party created over 30 pages of bylaws in one vote, some critically altering the rights of members in convention. Unsuccessful attempts were made to restrict certain members from being able to participate at all. The following 2 state party conventions saw those committee-enacted bylaws removed, the ability of the state party to make such amendments significantly reduced, and then finally the bylaws themselves were completely removed. After the 2020 annual convention, LPKY is now governed by a single-document, its Constitution and Bylaws, by action of the delegates in convention, and the rights of members are explicitly codified as a result.

The **members** of LPKY fixed their problems, in convention. This is the best remedy for such problems, and is what the LNC has recommended for Delaware.

⁵ (2008) Report of the “Official” Election Night Tally Results, Kentucky State Board of Elections
<https://elect.ky.gov/SiteCollectionDocuments/Election%20Results/2000-2009/2008/General%20Election/STATEwide%20by%20office%20gen%2008.txt>

⁶ Official 2012 General Election Results, Secretary of State
<https://elect.ky.gov/SiteCollectionDocuments/Election%20Results/2010-2019/2012/2012genresults.pdf>

⁷ Official 2016 General Election Results, Secretary of State
<https://elect.ky.gov/results/2010-2019/Documents/2016%20General%20Election%20Results.pdf>

Bylaw 5.2: Petition for affiliation

*Organizations which wish to become state-level affiliate parties shall apply for such status on a standard petition form as adopted by the National Committee, which petition shall be **signed by no fewer than ten members of the Party** residing in the appropriate state.*

To become the organization recognized as our state-level affiliate, we require signatures from 10 members of the party residing in the state to petition for affiliation.

We do not require a bank account, an IRS TIN, a website, ballot access, or any state recognition.

Clearly, one of the two primary concerns of creating an affiliate within the Bylaws is the membership.

Bylaw 5.2: Filing with National

*Affiliate party status shall be granted only to those organizations which **adopt the Statement of Principles and file a copy of their constitution and/or bylaws with the Party Secretary.***

We do require that an affiliate adopt the Statement of Principles and to submit the bylaws to the National party, as a matter of initially being considered to be a state-level affiliate. Adoption of those principles would inherently infer that the organization also follows the Statement of Principles.

But a constitution and bylaws, and the adoption of the Statement of Principles cannot happen without members. An organization without members cannot adopt anything.

Filing a copy of the constitution and/or bylaws would infer that a convention of the members has occurred, and the members have structured their party to create the long-term vehicle for the voice of Libertarians within that state.

Additional points: Analysis of the counter-point of ballot access

*(a) Which group is **recognized by the State as having ballot access**.*

Ballot access is not limited or blocked from being obtained by any organization. It is not a limiting factor as to who should be recognized, nor is it considered such under Delaware law.

Ballot access in Delaware is granted based upon the number of voters registered into a party. Per state law, this requirement is registration of 10/100% (or 0.1%) of all registered voters in Delaware⁸. There are currently 754,025 registered voters in Delaware⁹; therefore, the number of voters required to be a recognized minor party in Delaware is 755 voters. The current real cost for party registration is approximately \$10 per valid registration, so the cost to be permanently recognized as a party would be approximately \$7,550 assuming no other volunteer efforts.

Ballot access should not be a determining factor, because ballot access rules and criteria vary from state to state.

- In states like Ohio and Tennessee, the party does not have ballot access, nor will they in the next election cycle. Does that mean if some rogue group named itself “The Libertarian Party of Ohio” or “The Libertarian Party of Tennessee”, and spent \$250,000 to obtain ballot access under that name, that the LNC would be required to acknowledge that organization as its state-level affiliate?
- In states like Kentucky, ballot access cannot be achieved without the results of the previous presidential election reaching a certain threshold. Do parties without ballot access cease to exist as affiliates or as an organization?

It is quite possible to be effective, even without ballot access. Media coverage is not limited to those with ballot access¹⁰. Libertarians have been involved in noteworthy lobbying efforts and issue-based petitions to change laws.

Ballot access is simplistic and achievable in Delaware, even if it were to ever become necessary to start from nothing. Ballot access should not be a criteria upon which to determine legitimacy, even if it were not so easily attained.

⁸ Delaware Code Title 15, “Primary Elections and Nominations of Candidates”
<http://delcode.delaware.gov/title15/c030/index.html>

⁹ State of Delaware Dept of Elections, Voter Registration Totals January 1, 2022
https://elections.delaware.gov/reports/regtotals/2022/vrt_RD20220101.pdf

¹⁰ US News and World Report, “Political Party Inspired by 'Star Wars' Seeks Recognition”
<https://www.usnews.com/news/best-states/delaware/articles/2021-06-06/political-party-inspired-by-star-wars-seeks-recognition>

Additional points: Analysis of the counter-point of access to property and filings

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

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

Examining a world where assets and filings were the determining factor, it's clear that such criteria are flawed.

If there were a heavily and bitterly contested race for officers at a state party convention, and the incumbents lost, would a refusal to turn over assets to the new board, or refusal to amend paperwork, require the LNC to acknowledge the previous board as the legitimate leadership?

What if the LNC Treasurer, or a member of LNC staff, amended the articles of incorporation, filed new FEC paperwork, and/or changed the names on the party accounts? Would amended filings make it factual?

Our principles speak against the use of theft and fraud, but the use of possession as primary criteria would encourage those two actions. If someone can claim to be the leader of the party merely by possession and paperwork, then an inherent check-and-balance is removed. Therefore, neither possession of assets, nor state recognition, should be a determining factor in these cases. Parties are made up of their members, not assets. Unless a bad actor is willing to escalate to mass-kidnapping, using membership in convention as the criteria is the safest way to protect a party from bad/rogue actors.

Earlier in this LNC term, a rogue group in another state filed paperwork to claim to have the rights to multiple Libertarian Party groups within a state affiliate. They were not elected into those positions. They were not appointed by state committees. From all outside appearances, they were a group sympathetic to another political party. But, they filed paperwork to incorporate those entities, even in places where there were pre-existing affiliates which had not filed such paperwork, and the state blindly accepted that paperwork. Were those groups, then considered as rogue parties, actually legitimate? The LNC, through its chair at the time, stepped in to rebuff this group. Was that incorrect?

The determining factor should be the continuation of the body of members that last met in annual convention, or the delegates thereof subject to the criteria for participation created by the members or delegates at that last convention; the descendants of those that created the original affiliation with the LNC. And any decision to alter the status or rights of members should be undertaken in convention itself, where those members express *their* voice in *their* party.

Additional points: Purpose of affiliating state parties

What is the point of entering into state-level affiliations?

While this begins to deviate into areas where the LNC cannot go, under Bylaws article 5.5, it's important to remember that the LP is a political party. It's goal is to grow its support and get people elected to partisan political office, for the purpose of enacting policies which reflect our political platform.

Members of the party provide the base of support for those ends. Without membership, the party platform is merely a philosophical manifesto with no means of seeing that philosophy enacted. That's why membership is so very critical to the success of a political organization.

Members provide basic levels of support; donors, volunteers, and otherwise. They provide the means to enact Libertarian policies. Further, levels of membership can be used as a measuring-stick regarding the effectiveness of various campaigns.

From a self-interest perspective, a state-level affiliate provides local contacts to the LNC to work on specific projects within a state which are relevant to the interests of the LNC as expressed by its delegates (members) in convention.

The point of a state-level affiliate is to grow the libertarian philosophy within a state in a manner consistent with the goals of the broader party, as expressed by the membership at both the state and national level.

Conclusion

I would strongly encourage the members of the Judicial Committee to consider what it means to be a member of an organization, and the rights that members are supposed to have within an organization.

A party is made up of its members, which may then include, but is not limited to, people with titles and party assets such as a bank account and a website. Leadership titles, assets, and even ballot access should be given less weight as the determining factor as to what constitutes an affiliate party, in deference to recognizing that the members are what actually make up the organization.

The motion passed unanimously by the LNC at its December meeting reflects this reality – that LPDE is made up of its members – and encourages resolution to the current leadership controversy by those members.