



## LP PA Judicial Committee

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On June 20, 2023, the Judicial Committee of the Libertarian Party of Pennsylvania received a request from Jessica Glover, Chair of the Libertarian Party of Pennsylvania Affiliate Council and a member in good standing, regarding an amendment to the Libertarian Party of Pennsylvania Policy Manual made at the June 17, 2023 Executive Board meeting. Ms. Glover's email presented a question to the Judicial Committee, seeking an advisory opinion rather than appealing a decision of the Executive Board. As this is an advisory opinion, nothing in this opinion should be interpreted as the Judicial Committee nullifying any decisions of the Executive Board and will be worded as to what the likely outcome of an appeal would be.

Ms. Glover's full email states:

*My name is Jessica Glover and I am the chair of the Affiliate Council . At our Executive Board meeting there was a policy manual update that discussed line of succession.*

*A nomination from the Affiliate Council within thirty (30) days of the Regional Representative position becoming vacant, whereafter the nominee is ratified by the Executive Board within thirty (30) days;*

*I bring you to Article 7 Sec 3 part B in the bylaws that states, "Working Committees may be established by the Executive Chair subject to ratification by the Executive Board at the next regular meeting." There is no other provision in the bylaws that directs the Executive Board to ratify anything except through this provision about working committees. My question for all of you is, if this provision covers all matters such as ratification of an Affiliate Council appointment? If it does not, is the policy manual able to add this responsibility to their body?*

The Committee's interpretation of Ms. Glover's email is that she is asking whether the Executive Board has the authority to pass a policy manual change that adds requirements to the Affiliate Council or gives the Executive Board the power to ratify decisions of the Affiliate Council. In this opinion, we will examine the various aspects of the bylaws and policy manual to determine what powers the Executive Board might have to amend the policy manual to add requirements to or ratify decisions of the Affiliate Council.

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### **1. Power to Amend the Policy Manual**

The first aspect to consider is whether the Executive Board has the authority to make changes to the policy manual. The revision of the LPPA bylaws at the 2023 convention brought about changes in leadership structure and definitions. The policy manual, which was not modified by the body, may be using outdated terms that have since been redefined. As a result, certain powers now may reside with bodies that may not have been intended to possess them when the bylaws amendment was made.

The June 17, 2023 version of the Policy Manual, which is the only available reference on the website, states in Article XIV. Amendments:

*All amendments will be handled by the Board of Directors, as needed. A Simple Majority may change a given policy.*

In the bylaws, as revised March 2023 at the LPPA Convention, Article V. Board of Directors, Section 1: Organization Structure states,

*The Board of Directors is the governing body of the LPPA and shall consist of the Executive Board and the Affiliate Council.*

The policy manual states that the Board of Directors, which is defined by the bylaws, as the Executive Board and the Affiliate Council, has the power to amend the policy manual. This is not likely what was intended with the bylaw revision but is a result of the language of the former bylaws included in the policy manual, which did not undergo a general revision at convention. Regardless, there is a definition of the Board of Directors, and an appeal would likely result in any changes made to the Policy Manual unilaterally by the Executive Board being overturned.

Additionally, if policy manual changes were to be passed by both the Executive Board and the Affiliate Council, then any amendments within the limits of the bylaws would likely be permissible. The Affiliate Council would likely have the power to agree to choose a candidate to fill a vacancy and agree to allow the Executive Board to ratify that chosen candidate.

### **2: Vacancy Process Power**

The second test is where the power to determine how to fill a vacancy lies. In the bylaws Article V: Board of Directors, Section 12- Position Vacancies states that:

- a. *An Officer Position Vacancy within the Executive Board or Affiliate Council shall include instances where the then-current Officer is no longer able to serve in their role, as defined in the Policy Manual.*
- b. *In the event of a Position Vacancy, filling of the vacancy shall follow the processes and line of succession defined in the Policy Manual, wherein:*
  - i. *Members within the vacated subdivision of the Board of Directors shall be prioritized in the line of succession; and*

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- ii. *In circumstances in which a deputy position exists within these Bylaws for the vacated position, it shall have the right of first refusal.*
- c. *The individual filling a Position Vacancy shall be limited to individuals that are:*
  - i. *A voting member;*
  - ii. *Not under a Conflict of Interest Period;*
  - iii. *Not suspended, terminated, and/or not pending any suspension, termination, or disciplinary procedures; and*
  - iv. *Are qualified and willing to execute the duties and responsibilities of the office for which they would hold.*
- d. *Position Vacancies do not reset the remaining term on a position, and the individual filling a vacant position shall hold that position only until the original term of office concludes.*

The current version of the policy manual states the following in Section 2: Officer Vacancy and Line of Succession:

- A. *An Officer Position vacancy within the Executive Board or Affiliate Council shall include instances where the then-current Officer:*
  - I. *Resigns their position.*
  - II. *Initiates a Conflict-of-Interest Period, as defined in the Bylaws.*
  - III. *Resigns their membership within the Party.*
  - IV. *Is suspended or has their membership terminated.*
  - V. *Is subject to a successfully passed Position Recall, as prescribed in the Bylaws; or*
  - VI. *Is incapacitated and unable to continue the performance of their responsibilities.*
- B. *In the event that a position on the Executive Board is vacant, the following procedures shall apply:*
  - I. *Would the Executive Chair be vacant, the position shall be filled by, in order of priority with rights of refusal:*
    - a. *The Executive Vice Chair.*
    - b. *The Executive Secretary.*
    - c. *The Executive Treasurer.*
    - d. *An Executive Board Member with approval from the Executive Board and ratified by the Affiliate Council; or*
    - e. *A suitable replacement approved by the Executive Board and ratified by the Affiliate Council*
  - II. *Would the Executive Vice Chair be vacant, the position shall be filled by, in order of priority with rights of refusal:*
    - a. *The Executive Secretary.*
    - b. *The Executive Treasurer.*
    - c. *An Executive Board Member with approval from the Executive Board and ratified by the Affiliate Council; or*
    - d. *A suitable replacement approved by the Executive Board and ratified by the Affiliate Council.*

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- III. *Would the Executive Secretary be vacant, the position shall be filled by, in order of priority with rights of refusal:*
- a. *The Deputy Secretary*
  - b. *A suitable replacement approved by the Executive Board and the Affiliate Council.*
- IV. *Would the Executive Treasurer be vacant, the position shall be filled by, in order of priority with rights of refusal:*
- a. *The Deputy Treasurer.*
  - b. *A suitable replacement approved by the Executive Board and the Affiliate Council.*
- V. *Would a Regional Representative be vacant, the position may be filled by:*
- a. *A nomination from the Affiliate Council within thirty (30) days of the Regional Representative position becoming vacant, whereafter the nominee is ratified by the Executive Board within thirty (30) days; or*
  - b. *If a nominee is not provided by the Affiliate Council within thirty (30) days; the Regional Representative vacancy may be filled by appointment from the Executive Board and in situations where the Regional Representative is still vacant after sixty (60) days the position may be filled by appointment by either the Affiliate Council or Executive Board.*
- VI. *Would the Affiliate Council Chair be vacant, the position shall be filled by, in order of priority with rights of refusal:*
- a. *A nomination from the Affiliate Council within thirty (30) days of the Affiliate Council Chair position becoming vacant, whereafter the nominee is ratified by the Executive Board within thirty (30) days; or*
  - b. *If a nominee is not provided by the Affiliate Council within thirty (30) days the Affiliate Council Chair vacancy shall be filled by appointment from the Executive Board.*
- VII. *Would multiple Executive Board Vacancies occur concurrently, and/or in circumstances in which the process of filling a vacancy on the Executive Board results in another Executive Board position becoming vacant, the Vacancy Process shall be applied in the consecutive order, whereby the vacancies shall be disposed of in the following order of priority:*
- a. *The Executive Chair.*
  - b. *The Executive Vice Chair*
  - c. *The Executive Secretary*
  - d. *The Executive Treasurer*
  - e. *Regional Representatives; and*
  - f. *The Affiliate Council Chair*
- C. *In the event that a position on the Affiliate Council is vacant, the following procedures shall apply:*
- I. *Would the Affiliate Council Vice Chair be vacant, the position shall be filled by, in order of priority with rights of refusal:*

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- a. *the Affiliate Council Secretary.*
  - b. *an appointee of the Affiliate Council Chair with approval from the Affiliate Council.*
  - c. *an appointee of the Executive Vice Chair with approval from the Affiliate Council.*
  - d. *an Affiliate Councilperson with approval from the Affiliate Council; or*
  - e. *a suitable replacement approved by the Affiliate Council.*
- II. *Would the Affiliate Council Secretary be vacant, the position shall be filled by, in order of priority with rights of refusal:*
- a. *an appointee of the Affiliate Council Chair with approval from the Affiliate Council.*
  - b. *an appointee of the Executive Vice Chair with approval from the Affiliate Council.*
  - c. *an Affiliate Councilperson with approval from the Affiliate Council; or*
  - d. *a suitable replacement approved by the Affiliate Council.*
- III. *Would the Affiliate Council At-Large Councilperson be vacant, the position shall be filled by, in order of priority with rights of refusal:*
- a. *an At-Large Membership vote within thirty (30) days of the At-Large Councilperson position becoming vacant, whereafter the nominee is ratified by the Affiliate Council within thirty (30) days; or*
  - b. *If the At-Large Councilperson is still vacant after sixty (60) days, the position shall be filled by appointment by either the Executive Board or the Affiliate Council.*
- IV. *Would a position of Affiliate Council Councilperson be vacant, the position may be filled by the Affiliate for which the position represents.*
- V. *Would multiple Executive Board Vacancies occur concurrently, and/or in circumstances in which the process of filling a vacancy on the Executive Board results in another Executive Board position becoming vacant, the Vacancy Process shall be applied in consecutive order, whereby the vacancies shall be disposed of in the following order of priority:*
- a. *the Affiliate Council Chair.*
  - b. *the Affiliate Council Vice Chair.*
  - c. *the Affiliate Council Secretary.*
  - d. *the Affiliate Council At-Large Councilperson.*
  - e. *Affiliate Councilpersons.*
  - f. *The individual filling a Position Vacancy shall be limited to individuals that are:*
    - i. *a Voting Member.*
    - ii. *not under a Conflict-of-Interest Period; not suspended, terminated, and/or not pending any suspension, termination, or disciplinary procedures; and*

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- iii. *are qualified and willing to execute the duties and responsibilities of the office for which they would hold. Position Vacancies do not reset the remaining term on a position, and the individual filling a vacant position shall hold that position only until the original term of office concludes.*

The bylaws include provisions for a line of succession, which means that adding a line of succession and procedures for filling vacancies in the policy manual aligns with bylaws, in general. The bylaws must be further investigated to ensure that the policy manual does not conflict with them. The first part to examine is Article V: Board of Directors, Section 7: Affiliate Council which states:

- b. *Affiliates may select a Councilperson to represent their Affiliate on the Council.*

This bylaw section is not violated by the policy manual, but the policy manual is likely redundant to the bylaws, which has a potential to possibly cause a conflict in the future if amendments occur.

The second part to look at is Article V: Board of Directors, Section 8: Affiliate Council Responsibilities

- a. *The Affiliate Council shall internally elect the Affiliate Council Vice Chair and the Affiliate Council Secretary.*

The Affiliate Council is designed to be a separate committee with the power to override the Executive Board. The subsequent analysis assumes that the Executive Board possesses the authority to unilaterally amend the policy manual. Article V: Board of Directors, Section 8: Affiliate Council Responsibilities and Section 9: Affiliate Council Rights does not include the right or responsibility to nominate candidates to fill vacancies. As a part of the Board of Directors, the power to participate in filling vacancies is likely within the power of the Affiliate Council, but not within the power of the Executive Board to unilaterally compel the Affiliate Council to participate. The policy manual provisions regarding the filling of the Affiliate Council Vice-Chair and Secretary positions are likely in violation of the above bylaw provision that explicitly states that the Affiliate Council shall internally elect those positions. There is potential ambiguity regarding the Affiliate Council Chair, who holds membership in both the Executive Board and the Affiliate Council and is elected by the Convention. There is also some potential ambiguity with the Affiliate Council At-Large position, which is a member of only the Affiliate Council, but elected by the entire convention. As a member of the Affiliate Council only, the position would likely fall within the autonomy of the Affiliate Council.

### 3. Working Committees

In the initial email, Ms. Glover asked if Article VII: Committees, Section 3. Working Committees gives the Executive Board a right in the bylaws to ratify decisions made by the Affiliate Council. The Affiliate Council is an entity created by the bylaws and does not meet the definition of Working Committee. Therefore, nothing in this section applies to the Affiliate Council.

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### Conclusions

There are a few things that make this request complex, but very simply, the Judicial Committee, would likely find the following:

- 1) Nothing in the Working Committees section applies to the Affiliate Council, as the Affiliate Council is an entity created in the bylaws and does not meet the definition of working committee.
- 2) The Executive Board does not have the right under the current policy manual to amend the policy manual unilaterally.
- 3) The Executive Board does not have the right to assign responsibilities unilaterally to the Affiliate Council, including requiring the Affiliate Council to nominate and/or ratify a candidate to fill a vacancy.
- 4) The Executive Board does not have the right to unilaterally grant themselves the power to ratify candidates for internal Affiliate Council roles, especially Affiliate Council Vice-Chair and Secretary.
- 5) The Affiliate Council can agree to take on the roles of nominating and/or ratifying a candidate to fill a vacancy. The Affiliate Council might have the power to allow the Executive Board to ratify elections for positions on the Affiliate Council.

### Further Recommendations

The Judicial Committee recognizes that this advisory opinion is likely to result in at least one, if not multiple appeals, shortly after release. Keep in mind, this is only an advisory opinion based on the question asked and the interpretation of governing documents. There is no guarantee that in an appeal, with a formal hearing, that we would reach the same conclusion. We would encourage communication between the Executive Board and the Affiliate Council to evaluate the other actions, especially changes to the policy manual, to ensure harmony between the leadership and representatives in furthering the purpose and missions of the LPPA. We would further suggest that the Governance Committee and Bylaws Working Committee evaluate ways to further improve the roles and responsibilities of the Executive Board and Affiliate Council, especially in areas with significant overlap. Without attempting to exercise undue influence, some potential solutions that would likely hold up would be:

- 1) Amend the bylaws at the next convention to define the line of succession and the Executive Board and Affiliate Council roles in filling vacancies. Anywhere that both the Executive Board and Affiliate Council need to take positive actions, bylaws should define those responsibilities and that relationship. The solution in the short term is having both groups vote to adopt a line of succession and vacancy procedure. While neither group can dictate that the other group take an action, both groups can voluntarily take actions within the confines of the bylaws.
- 2) As the Affiliate Council has the right to veto any action of the Executive Board, general policy manual changes make sense to fall to the Executive Board. Where this may become an issue, is that there is no document that the Affiliate Council has the exclusive right to create and amend to define their internal operating policies. As an autonomous body, the Executive Board likely does not have the right under the current bylaws to dictate the Affiliate Council's internal



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policies and procedures. Allowing a section of the policy manual to be under full control of the Affiliate Council and limited to internal procedures and policies of the Affiliate Council will likely fix this. The other solution would be to authorize the Affiliate Council to create and maintain their own "Policy Manual" limited to defining their internal policies and procedures.

Respectfully submitted,

**Judicial Committee**

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