

In the related cases of
Wes Wagner vs. the Libertarian National Committee
and
Ian Epstein vs. the Libertarian National Committee

On July 23, 2015, we, the Judicial Committee of the national Libertarian Party, received from Ian Epstein an appeal of an alleged constructive disaffiliation of the Libertarian Party of Oregon. Before considering the case of Ian Epstein vs. the Libertarian National Committee, we look to our previous ruling in Wes Wagner vs. the Libertarian National Committee.

On August 23, 2011, we heard the case of Wes Wagner vs. the Libertarian National Committee. On August 25, 2011, we issued a ruling in that case. According to Article 6.6 of our bylaws, the last day on which we could have issued a ruling was September 22, 2011, 30 days after our hearing.ⁱ On September 23, 2011, we amended that ruling, pursuant to the power of every committee to amend or rescind something previously adopted.ⁱⁱ

Our ruling of 2011, both as originally adopted (“We find that the Libertarian Party of a particular state, in this case the State of Oregon, is the entity that is recognized by the secretary of state, in this case the Secretary of State of Oregon.”) and as amended (“that the LNC must by default recognize the affiliate representatives that are currently recognized by the affiliate’s secretary of state”), suffers from a number of defects that have since become apparent:

1. By subjugating our affiliates to the whims of government bureaucrats, our ruling of 2011 conflicts with the Statement of Principles of the Libertarian Party by bowing to the cult of the omnipotent state.
2. Other than Judicial Committee rules of procedure, the Judicial Committee has no power to create new rules governing the Libertarian Party. In other words, we have no power to legislate from the bench. Article 18 of our bylawsⁱⁱⁱ reserves to the delegates assembled in convention the power to establish rules governing the Libertarian Party. However, we arrogated power by concocting a new rule allowing the secretary of state to determine the officers of our affiliates, a rule not found in our bylaws, and then used this concocted rule rather than our bylaws as the basis of our ruling in Wes Wagner vs the Libertarian National Committee.
3. In Wes Wagner vs. the Libertarian National Committee, we set a dangerous precedent that an outgoing affiliate party chair who was not re-elected could cling to power by lying to the secretary of state.
4. In Wes Wagner vs. the Libertarian National Committee, by granting the secretary of state rather than the members of each affiliate the power to determine the officers and bylaws of each affiliate, we violated Article 6.5 of our bylaws^{iv} and abridged the autonomy of all our affiliate parties.
5. A logical consequence of our ruling in Wes Wagner vs. the Libertarian National Committee is that the Libertarian National Committee is enjoined from recognizing affiliate parties in more than a dozen states in which the secretary of state does not recognize our affiliate as a political party.
6. Another logical consequence of our ruling in Wes Wagner vs. the Libertarian National Committee is that in cases where one group has adopted our Statement of Principles and another group has not but is recognized by the secretary of state, the LNC is required to recognize the entity not in compliance with Article 6.2 of our bylaws.^v

7. Wes Wagner vs. the Libertarian National Committee was an appeal of an alleged disaffiliation pursuant to Article 6.6 which only allows the Judicial Committee to “either affirm the National Committee’s revocation of affiliation party status or order reinstatement of the affiliate party.” Our bylaws do not give us the power to decide such an appeal any other way. We exceeded our authority by deciding the question using a concocted rule outside these two options provided for by our bylaws.
8. We decided Wes Wagner vs. the Libertarian National Committee by voiding a decision of the LNC. “... the action of the Libertarian National Committee and its Executive Committee was void,” The authority to void a decision of the Libertarian National Committee is granted to us by Article 8.12 of our bylaws, but only upon the “appeal by ten percent of the delegates credentialed at the most recent Regular Convention or one percent of the Party sustaining members.” We find no evidence of an appeal by either.
9. The appellant in Wes Wagner vs. the Libertarian National Committee (Wes Wagner) did not represent an organization that had its affiliate status revoked. Accordingly, the Judicial Committee had no subject matter jurisdiction, per Article 6.6 and Article 9.2.a of our Bylaws.

Therefore, our August 25, 2011 ruling in the case of Wes Wagner vs. the Libertarian National Committee, and as amended on September 23, 2011, is hereby rescinded.

Rescinding our ruling in Wes Wagner vs. the Libertarian National Committee leaves standing the 2011 decisions of the Libertarian National Committee and its Executive Committee concerning the Libertarian Party of Oregon. Those decisions found^{vi} that on May 21, 2011, Tim Reeves was properly elected Chairperson of the Libertarian Party of Oregon in accordance with the Constitution and Bylaws of the Libertarian Party of Oregon then in effect.^{vii} Therefore, common sense would indicate that any process that respects the Bylaws of the Libertarian Party of Oregon (the March 2009 Bylaws until March 9, 2013 and the March 2013 Bylaws thereafter) should produce a legitimate successor to Tim Reeves as Chairperson.

Additionally, having rescinded Wes Wagner vs. the Libertarian National Committee, Ian Epstein vs. the Libertarian National Committee becomes moot. Accordingly, Ian Epstein vs. the Libertarian National Committee is hereby dismissed without prejudice.

September 13, 2015

Concurring opinion in the related matters of
Wes Wagner vs. the Libertarian National Committee
and
Ian Epstein vs. the Libertarian National Committee

For the reasons set forth in my dissenting opinion in *Wes Wagner vs. the Libertarian National Committee* in 2011, I concur with the majority's result to the extent it rescinds this Committee's earlier ruling in this matter.

However, in that dissent I wrote that it "should not be construed as an opinion on the merits of the Libertarian National Committee's determination as to which organization it recognized as its affiliate in this matter."

This Committee was not petitioned in 2011 to affirm the Libertarian National Committee's findings that "Tim Reeves was properly elected Chairperson of the Libertarian Party of Oregon in accordance with the Constitution and Bylaws of the Libertarian Party of Oregon then in effect." Rather, our Committee was petitioned to determine whether Wes Wagner represented an organization that had its affiliate status revoked by the Libertarian National Committee. One can answer the latter question by deciding that the petitioner had not met his burden of persuasion without answering the former question. Exercising such restraint was my view back then, and it remains my view now. The questions are similar and related, but they are different questions. Therefore, I do not join in that sentence in the penultimate paragraph of the majority's opinion. To that end, I also don't join in the footnotes accompanying that sentence which, although interesting, go beyond what is necessary to rescind this Committee's earlier ruling and dismiss the later petition.

Concomitantly, I don't join in the following sentence either, which strikes me as unnecessary dictum.

I also concur with the majority's decision to dismiss *Ian Epstein vs. the Libertarian National Committee* as moot.

Rob Latham

September 12, 2015

Minority opinion on Libertarian Party Judicial Committee vote of August 15, 2015
to rescind 2011 decision regarding Wagner vs Libertarian National Committee
September 12, 2015

In passing the motion to rescind the ruling of the Judicial Committee from 2011, the majority has introduced in 2015 the new threat of double jeopardy to the Judicial Committee appeals process.

Previously, if an individual had his or her membership revoked, or a state party had its affiliation revoked by the LNC, they could appeal to the Judicial Committee in a timely manner. If they won that appeal, they were "safe" with regard to the initial claim against them. With this 2015 vote to rescind a decision from a prior committee in 2011, the Judicial Committee has made clear that any LNC that wishes to override a Judicial Committee decision on an appeal need only gain a majority in the next Judicial Committee election, even with members of the LNC whose decision was overturned by the Judicial Committee, and rescind that earlier decision.

The majority had other options at their disposal to address the controversy over whether the LNC always should recognize a state party that is recognized by that state's government (such as simply rejecting an appeal this year from Alabama based on a claim of state government recognition), but instead they opted to set the precedent that winning an appeal of a revocation of membership or affiliation can be rescinded by a subsequent Judicial Committee.

This dangerous new precedent, while extremely corrosive to the trust that the Party's members place in the impartiality of the Judicial Committee, offers a simple remedy. A new Judicial committee could be elected at the next convention to reverse this double jeopardy precedent.

We regret that the Judicial Committee now has been politicized in this way, and we hope that future Judicial Committees will use more restraint and follow the Bylaws that clearly state that the Judicial Committee only may review appeals to actions taken by the LNC itself, thus refraining from reviewing decisions by prior Judicial Committees. The Judicial Committee ought to be a check on the power of the LNC, not a subsequent tool of the very LNC members whose actions were appealed and overturned.

The best outcome now would be for the delegates at the next Libertarian National Convention to pass a change to the Bylaws explicitly restricting the Judicial Committee to reconsidering or rescinding only decisions regarding appeals made in its own term. To change a precedent from a previous committee, any subsequent committee would have to hear a new and timely appeal of the same nature, not simply reconsider or rescind an appeal made to a prior committee.

Double jeopardy in the judicial process is a dangerous precedent to set, and not in line with Libertarian principles of limited executive and legislative power with strong checks and balances.

Submitted by Steven R Linnabary and Rob Power

Minutes of the Judicial Committee
of the
Libertarian Party
15 August 2015

Called to order: 16:07 EDT

Present (via Adobe Connect): Carling, Latham, Linnabary, Power, Sink-Burris, Visek, Wolf
Absent: none

Rule limiting debate to speaking twice per day on the same topic suspended by unanimous consent.

Moved and seconded to Rescind the Judicial Committee decision issued on August 25, 2011, including the amendment issued on September 23, 2011, in the matter titled Wes Wagner vs. the Libertarian National Committee.

A point of order was raised on whether or not the motion to Rescind is in order. The Chair ruled that the motion to Rescind is in order. The ruling of the Chair was appealed. The ruling of the Chair was sustained 4-2, with the Chair abstaining.

A question of parliamentary inquiry was raised on the vote required to Rescind. Because notice was given in the call to meeting and because no member of the Judicial Committee voted in the majority (either of these two reasons sufficing to require a majority vote), a majority vote is sufficient to Rescind.

The votes on the motion to Rescind are 4 in the affirmative and 2 in the negative. Carling: Abstain, Latham: Yes, Linnabary: No, Power: No, Sink-Burris: Yes, Visek: Yes, Wolf: Yes. The motion to Rescind carries. Wes Wagner vs. the Libertarian National Committee, and as amended, is rescinded.

Moved and seconded to dismiss the petition of Ian Epstein vs the Libertarian National Committee. The votes are 6 in the affirmative and 0 in the negative. Carling: Abstain, Latham: Yes, Linnabary: Yes, Power: Yes, Sink-Burris: Yes, Visek: Yes, Wolf: Yes. The motion to dismiss carries. The petition of Ian Epstein vs the Libertarian National Committee is dismissed.

A ruling will issue within 30 days.

Adjourned to the call of the Chair by unanimous consent.

Adjourned: 18:32 EDT

- i “Failure of the Judicial Committee to rule within 30 days shall constitute an affirmation of the National Committee's revocation of affiliate party status...”
- ii RONR (11th ed.) p. 305: “By means of the motions to *Rescind* and *Amend Something Previously Adopted* – which are two forms of the one incidental main motion governed by identical rules, the assembly can change an action previously taken or ordered.” pp. 306-07: “In a committee, these motions require a two-thirds vote unless all committee members who voted for the motion to be rescinded or amended are present or have received ample notice, in which case they require a majority vote.” In the case of *Wes Wagner vs. the Libertarian National Committee*, there are currently no members of the Judicial Committee who voted in favor of the decision, therefore a majority vote is sufficient to rescind or amend with or without notice. Further, ample notice was given, therefore a majority vote is sufficient to rescind or amend regardless of the current composition of the Judicial Committee or how any members may have voted in 2011. p. 307: “In contrast to the case of the motion to Reconsider, there is no time limit on making these motions after the adoption of the measure to which they are applied, and they can be moved by any member, regardless of how he voted on the original question.” On September 23, 2011, we had the power to amend our decision of August 25, 2011, despite the fact that our power to decide the original question had expired. We still retain the power to amend or rescind that decision.
- iii “These Bylaws may be amended by a 2/3 vote of the delegates at any Regular Convention.”
- iv “The autonomy of the affiliate and sub-affiliate parties shall not be abridged by the National Committee *or any other committee* of the Party, except as provided by these Bylaws.” (emphasis added)
- v “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.”
- vi The requirement to credential is unavoidable. For the Libertarian Party to faithfully comply with its bylaws, it must know the identity of the affiliates, their officers, and at times the rules by which each affiliate operates.
 - The Party’s purposes in Article 3 require it to charter affiliate parties and support their candidates for public office.
 - Article 6 requires that there be no more than one state-level affiliate in a state and that entitles them and only their sub-affiliates to use the name “Libertarian Party,” so identifying the affiliate is important if two groups are claiming leadership and have different sub-affiliate parties.
 - Article 6.4 prohibits affiliate parties from endorsing members of other political parties in partisan elections; if the National Committee chooses to disaffiliate the affiliate for the actions of its officers, it needs to establish that those were indeed the officers, not some rogue group claiming such.
 - Article 8.4 limits a member of the National Committee to being a candidate of the party or an affiliate.
 - Article 8.8 allows a Regional Representative to be removed and replaced by an act of its affiliates or its chairs; if more than one person claims to be the chair of an affiliate, the National Committee’s credentialing process sorts that out.
 - Article 11 includes eligibility requirements for national convention delegates, dependent on the action of the affiliates and its officers; this requires that the Secretary be able to identify the chairs of affiliates to inform them of delegation allocations and the Credentials Committee needs to know from whom to accept delegate listings.
 - Article 12 mandates that the Platform and Credentials Committees be partially populated by appointees of top-ranking affiliates; this requires that the identity of the officers be known to determine whose word to accept regarding the identity of these appointments.

The aforementioned represents only a partial list of bylaws-related actions requiring credentialing by the National Committee and does not address numerous interactions among the National Committee, its staff, and affiliates that require establishing the identity of an affiliate and its officers.

- vii This is not the first time that the Libertarian National Committee needed to ascertain which set of claimants were the officers of an affiliate. For example, in 1995, two groups claiming to be the officers of the Libertarian Party of Oregon contacted the Libertarian National Committee. Because the Libertarian National Committee must be able to determine who is the chair of each affiliate any time a regional representative or regional alternate vacancy is to be filled, the Libertarian National Committee is required by Article 8.8 of our bylaws to be able to determine who is the chair of an

affiliate party. After the Libertarian National Committee had reviewed all the submitted documents and considered the matter, National Chair Steve Dasbach wrote inter alia to all concerned, after citing the national LP bylaw articles which are now numbered 6.3 and 6.5:

Thus, under the national Bylaws, it is the responsibility of the LNC to ensure that there is only one affiliate party in any one state. In practice, this means that the LNC must be able to identify the membership of the state central committee. In making that determination, the LNC is expressly instructed not to abridge the autonomy of that affiliate party.

The governance of an affiliate party is determined by its constitution and/or bylaws. In the case of the Libertarian Party of Oregon, Article IV Section 5 of its constitution establishes that “The Judicial Committee shall be the final body of appeals in all matters requiring interpretation of the Constitution, Bylaws, rules, or resolutions of the LPO, subject to a provision that a decision of the Judicial Committee may be overturned by a three quarters vote at the next convention.” The LNC recognizes the authority of the Judicial committee of the Libertarian Party of Oregon, as specified in its Constitution and Bylaws.

Thus, the Libertarian National Committee rather than seeking governmental determination of who our affiliate officers are, instead respected the autonomy of the Libertarian Party of Oregon by looking to the Constitution and Bylaws of the Libertarian Party of Oregon to ascertain the officers of the Libertarian Party of Oregon.