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**IN THE JUDICIAL COMMITTEE**

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**BRAD PLOEGER, ET AL.**

**V.**

**LIBERTARIAN NATIONAL COMMITTEE, INC.**

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*ON PETITION FOR VOIDING  
A DECISION OF THE NATIONAL COMMITTEE  
AND DECLARATORY RELIEF*

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**BRIEF OF RESPONDENT**

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## **JURISDICTION**

The Libertarian National Committee concurs that the Judicial Committee has jurisdiction over the issues presented by the petition.

## **STATEMENT OF THE FACTS**

The cost of the 2012 Libertarian Party Convention is estimated to total approximately \$158,000. The Convention Oversight Committee established a series of packages (Gold, Silver, and Bronze) that include various receptions and dinners to try to finance as much of the cost of the convention as possible from those who choose them. To seek to balance the convention budget by covering direct costs and a portion of common costs, the committee also set a \$94.00 minimum convention registration fee, estimated to produce \$54,520 toward the convention budget. The Libertarian National Committee subsequently rejected a motion to make the \$94 cost of the business session optional in all convention packages.

Whether, as a matter of policy, these decisions were wise or desirable is, of course, not the province of the Judicial Committee. However, the facts clearly demonstrate that the convention registration fee is reasonably related to the need to cover the costs of conducting the convention.

## ARGUMENT

### I. Introduction

In their attack on the authority of the Libertarian National Committee to set a convention registration fee, petitioners make three basic arguments in the alternative:

1) that provision for a convention registration fee is a requirement added to what the Bylaws specify as qualification for being a delegate, and therefore impermissible – neglecting to recognize that the Bylaws require that a delegate must be registered, and that payment of a registration fee is a standard part of convention registration;

2) that the authority of state affiliate parties to determine their elected delegates precludes any requirement that a delegate must pay a convention registration fee except, presumably, such a fee imposed by an affiliate party on its own delegates – despite the fact that a uniformly applied convention registration fee in no way affects a state affiliate’s authority to determine who will represent it and how they are selected; and

3) that only the Convention, not the Libertarian National Committee, has the authority to set convention registration fees for delegates – despite the Bylaws granting plenary authority to control and manage the affairs of the Party to the National Committee, but only specifically enumerated authorities to the convention, not including any authority relating to a convention registration fee.<sup>1</sup>

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<sup>1</sup> These are arguments in the alternative, not complementary arguments, because if any one of them is correct the others cannot be.

If it is correct that the Bylaws absolutely preclude convention registration fees, then their adoption does not infringe on any claimed plenary authority of the state affiliates or of the Convention since neither the state affiliate nor the Convention could adopt them either (other than by adoption of a bylaws amendment).

If it is correct that the plenary authority of affiliate parties to determine their elected delegates means that delegate convention registration fees can be imposed by no other body, then the Convention cannot have the authority to establish such fees (except through adoption of an amendment to the bylaws) and, of course, it cannot be true that such a fee is precluded absolutely (since presumably the affiliates could exercise their plenary authority to impose them).

Similarly, if it is correct that under the Bylaws the Convention has the authority to set convention registration fees for delegates, then it cannot be true that the setting of a delegate registration fee either is prohibited absolutely or infringes the plenary authority of affiliate parties to determine their elected delegates.

## **II. Far From Precluding a Convention Registration Fee, The Bylaws Authorize One**

### **A. The Bylaws Requirement That a Delegate Must “Have Registered at the Convention,” Together With the Description of Registration In the Parliamentary Authority Adopted By the Bylaws, Authorizes a Convention Registration Fee**

Petitioners point out that Article 11 (3)(a) of the Bylaws states, “At all Regular Conventions delegates shall be those so accredited who have registered at the Convention.”

The petitioners claim this means that “The Credentials Committee may only register delegates, give them their delegate badge and credentials, and accept any optional Convention package purchase funds. . . . That means the COC [Convention Oversight Committee] and the LNC have no authority to impose any requirements upon delegates, including any fee to participate in party business as a delegate. The imposition of a floor fee by the COC or the LNC is an additional requirement placed upon delegates beyond the requirements set forth in the Bylaws.” Petitioners’ Brief, pp. 11-12.

But this claim begs the question of what “registered at the Convention” *means*. The petitioners simply assert, without citation, that the term somehow includes giving out badges and credentials – and even collecting fees for “optional” events associated with the convention – but cannot include collecting convention registration fees.

The Bylaws themselves do not directly define “registered” or “registration.” However, Article 16, titled “Parliamentary Authority,” provides, “The rules contained in the current edition of Robert’s Rules of Order, Newly Revised shall govern the Party in all cases to which they are applicable and in which they are not inconsistent with these bylaws and any special rules of order adopted by the Party.”

The current eleventh edition of the Party’s parliamentary authority *does* describe what is meant by “registration”:

Registration . . . normally includes these steps:

- a) Submission, by the member intending to register, of evidence that he is entitled to do so;
- b) Verification by the committee, or a subcommittee of it, that the member’s credentials are correct;
- c) Recording of the member as officially registered, upon his paying the registration fee (which is sometimes sent in in advance) and signing the list of registrations; and
- d) Issuing of the particular badge to which the member is entitled, the official program, and additional necessary information, such as time and place of individual section or committee meetings or workshops.

RONR (11<sup>th</sup> ed.), p. 612, ll. 6-18.

Petitioners evidently accept part of this definition, since they appear to concede the first part of (c), “Recording of the member as officially registered” and explicitly accept part of (d), “Issuing of the particular badge to which the member is entitled.” They reject, however, the applicability of second part of (c), “upon his paying the registration fee.” Seizing on the word

“normally,” they state, “the plain language in the section is of a descriptive example and not a requirement.” Petitioners’ Brief at 14.

Yet it is precisely a *description* or definition of what “registration” normally includes that is needed and relevant. One of the most important roles of a parliamentary authority is to provide definitions and interpretations of terms commonly used in bylaws, so that, instead of organizations having to adopt voluminous bylaws in which every term used in them is defined therein, they may rely on the parliamentary authority for that information.

For example, Article 9 (3) of the Bylaws provides that new Rules of Appellate Procedure proposed by the Judicial Committee take effect “unless denied by a 2/3 vote of the National Committee.” The Bylaws themselves do not explicitly define “2/3 vote” – but the parliamentary authority adopted by the bylaws does, as “at least two thirds of the votes cast by persons entitled to vote, excluding blanks or abstentions, at a regular or properly called meeting.” RONR (11<sup>th</sup> ed.), p. 408, ll. 8-11. Thus, reference to the parliamentary authority makes clear that a “2/3” vote means two thirds of those voting, not – for example – two thirds of all the members of the National Committee – and clarifies that abstentions and blank votes are not to be counted in the total of those voting. Many other examples could be given of terms used in the LP Bylaws that are given more explicit definition or description in the parliamentary authority.

RONR’s statement that the various elements it lists are “normally” part of registration of course admits of the possibility that some organizations, during registration at some conventions, might not include all of those items. But petitioners seek to turn the possibility of omission of some elements of what the parliamentary authority describes as constituting registration into a prohibition of those elements unless they are separately specifically listed in the bylaws. They claim, “RONR is silent on whether a registration fee or floor fee is required—as it should be since not all organizations charge such fees; and as such it defers back to Bylaws, where it is usually specified.” Petitioners’ Brief at 14. Petitioners cite no authority for the proposition that a registration fee is “usually specified” in the bylaws.

In fact, in the section of the LP’s parliamentary authority dealing with “Conventions of Delegates”, the very first subsection is entitled “Basic Provisions in Bylaws,” RONR (11<sup>th</sup> ed.), pp. 601-602. In it, RONR very specifically describes the provisions that it states should be included in the bylaws of an organization that conducts conventions. That list does not include any provision explicitly mentioning a convention registration fee for organizations charging one, just as it does not say that the bylaws should include provisions that explicitly require registrants to sign the registration list or that authorize the credentials committee to verify the correctness of the registrants’ credentials – or, indeed, that specify any other of the steps set forth in RONR’s description, on page 612, of the normal steps in convention registration.

Would the petitioners consistently apply their prohibition argument about the registration fee to say that the credentials committee is prohibited from verifying the correctness of the registrants’ credentials, since the LP Bylaws do not explicitly task it with doing so?

The fundamental conclusion is this: when the Bylaws name registration at the convention as among the requirements to be a delegate and when this requirement is read together with the description of the elements of what is normally included in registration found in the parliamentary authority adopted by the bylaws, it follows that the appropriate LP authority (see III and especially IV below for which entity is the appropriate LP authority) is authorized to require fulfillment of those elements in order for delegates to be deemed registered. Whether and precisely how each of those elements is required is a matter the appropriate LP authority may



reasonably specify. It certainly cannot be concluded that because a particular element *may* be omitted that all of the elements *must* be omitted unless they are each specifically listed in the Bylaws.

### **B. Rules In the Parliamentary Authority Relating to Members May Not Be Improperly Applied to Delegates**

As support for their claim that convention registration fees may not be charged, Petitioners' Brief at 12 claims:

The adopted parliamentary authority of the Party . . . appears to limit the ability of the COC and LNC to impose a floor fee, "*Members cannot be assessed any additional payment aside from their dues unless it is provided for in the bylaws.*" RONR (11<sup>th</sup> ed.), p. 572, ll. 2-4. A fee on members after their membership dues are paid to exercise the duties of that membership as a Convention delegate definitely qualifies as prohibited under this rule. They have already paid for that right through their membership dues, to either the Party or an affiliate.

However, being a member of the LP or of a state affiliate does not, of course, by itself entitle one to be a delegate to any LP Regular Convention. At most, such membership qualifies one for being selected as a delegate. Serving as a convention delegate is certainly not a "duty" of membership.

The petitioners' claim is simply inapplicable, because it misapplies to delegates a rule relating to members.<sup>2</sup>

### **III. The Authority of State Affiliate Parties To Select Their National Convention Delegates Is Not Infringed by a Uniform Convention Registration Fee Applied To All Delegates**

Taking note of the Bylaws provision that "Each state-level affiliate party shall, in accordance with its own Bylaws and these Bylaws, determine who shall be its delegates to all Regular Conventions," Article 6 (3), petitioners claim the National Committee's setting of a

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<sup>2</sup> The meaning of the cited RONR sentence is that members cannot be assessed any additional payment AS MEMBERS unless the bylaws so provide. For example, an organization could not decide by majority vote that, as the clubhouse needs a new roof, a special assessment of \$ X, over and above dues, will be imposed on all members. However, this does not preclude charging special fees for particular events which members may, but are not compelled to, attend. For example, if a special dinner dance were held, open only to members, the prohibition would not preclude requiring those who wished to attend to buy tickets.

If the sentence were instead interpreted to mean that an organization could never charge members any fee over and above their dues, that interpretation would produce an absurd result. It would mean, for example, that if the organization produced publications or other items for sale, members could obtain them—presumably in unlimited quantity—for free, and only non-members could be charged.

convention registration fee “violated the autonomy of all affiliate parties to select their delegates,” Petition ¶ 7. But the registration fee is applied equally to all delegates, regardless of who they are or how a state affiliate chose to select them. In no way does the setting of the fee seek to alter or supersede whatever process a state affiliate adopts to select its delegates. Nor does the fee differ depending on any factor that might affect that selection, such as by charging more or less depending upon what faction within the LP a delegate might support. It is entirely neutral in application and thus in no way can be construed as “infringing upon the authority of the state affiliates” to select their delegates, Petitioners’ Brief at 11.

#### **IV. As Between the Convention and the National Committee, Which Has Authority to Set Convention Registration Fees?**

##### **A. The Bylaws Grant Plenary Authority to the National Committee But Only Enumerated Powers to the Convention**

Petitioners maintain that “Delegates while assembled in a National Convention represent the ultimate authority within the Libertarian Party. Said authority may be only restricted by provisions listed in the Bylaws, Convention Special Rules of Order, parliamentary authority or applicable law.” Petition, ¶ 4. That statement, however, does not accurately reflect the provisions of the Libertarian Party Bylaws.

Article 8 (1) provides, “The National Committee shall have control and management of all the affairs, properties and funds of the Party consistent with these Bylaws.” Article 7 (4) refers to the “National Committee’s plenary control and management of Party affairs, properties and funds.”

The specific mandate for the Judicial Committee’s review of challenged actions by the National Committee is telling in this regard. Article 8 (13) provides that “the Judicial Committee shall consider the question of whether or not a decision of the National Committee *contravenes specified sections of the Bylaws*.” (Emphasis added.) Note that the Bylaws do not refer to decisions “exceeding the National Committee’s authority under the Bylaws” or similar language, but rather to violating specific limits on what the National Committee can do. This is consistent with the National Committee having “plenary control and management of Party affairs,” Article 7 (4), subject to specific grants of power to other entities, specific rights it cannot contravene, or other specific limits on its powers. In other words, the enabling language in the Bylaws describing the authority of the National Committee is purposely broad in scope, subject only to limits mentioned elsewhere in the Bylaws.

By contrast, the Bylaws contain no similar general grant of authority to the Convention. Instead the Bylaws enumerate certain particular powers and responsibilities of the Convention. Only a Regular Convention may amend the Bylaws (Article 17), the Statement of Principles [Article 4 (1)], the Platform [Article 4 (2)], or the Convention Special Rules of Order [Article 11 (10)]; only it may nominate candidates for President and Vice-President [Article 14 (1)]. It elects the four party officers [Article 7 (1)], at large members of the National Committee [Article 8 (2)(b)], and members of the Judicial Committee [Article 9 (1)] . It receives financial reports from the Treasurer and an independent auditor [Article 7 (7)]. It can vote to approve additional delegates and alternates whose names are submitted late [Article 11 (5)(e)]. Those are the only powers the Bylaws specify for a Regular Convention.

In short, if there is a national Libertarian Party entity whose “authority may be only restricted by provisions listed in the Bylaws, Convention Special Rules of Order, parliamentary authority or applicable law,” in the words of the Petition, ¶ 4, it is the National Committee, which the Bylaws grant plenary power, not the Convention, which the Bylaws grant only specific enumerated powers.

### **B. The Plenary Authority Granted by the Bylaws to the National Committee Includes the Authority to Set Fees**

Petitioners argue that because the Bylaws do not specifically grant the National Committee the authority to set a convention registration fee, it has no authority to do so. Brief of Petitioners, pp. 12-13. But this argument proves too much. Petitioners implicitly concede that the National Committee may set fees for “seminars, workshops, and meals” associated with the convention but which are “optional,” *id.* at 11, yet no *specific* authority for its setting such fees is found in the bylaws. The Bylaws contain no *specific* authority for the National Committee to pursue ballot access measures, maintain an LP website, or have a national office. They do not need to, because all of these things logically fall under the National Committee’s “control and management of all the affairs, properties and funds of the Party consistent with these Bylaws.” Article 8 (1).<sup>3</sup>

### **C. Recognizing the National Committee’s *Plenary* Authority Does Not Dangerously Accept That It Has *Unlimited* Authority**

Petitioners acknowledge that the convention registration fee set by the National Committee is “only ninety-four (\$94),” Petitioners’ Brief, p. 15, implicitly conceding its reasonableness. They fear, however, that if the “LNC holds the authority to impose” *that* fee it would inescapably follow that the National Committee’s authority would be “unlimited” and even extend to allowing it “to amend the Convention Special Rules of Order at will.” *Id.*

Such a fear is misplaced. The Bylaws’ grant of plenary authority to the National Committee under Article 8 (1) expressly requires that authority to be exercised in a manner “consistent with these Bylaws.” Article 8 (13) authorizes the Judicial Committee to overturn any decision of the National Committee that “contravenes specified sections of the Bylaws.” As Petitioners’ Brief, p. 15, itself notes, “*Bylaw 11.10* clearly states that the ‘Convention Special Rules of Order may be amended only by a Regular Convention.’ ”

A decision by the Judicial Committee in this case that the National Committee was within its authority in setting a registration fee that is unquestionably reasonably related to recouping the costs of conducting the convention would by no means foreordain its conclusion in very different fact conditions – to take an absurd example, such a decision would not preclude the Judicial Committee from considering whether a convention registration fee set at \$100,000 was inconsistent with the Bylaws, based on a claim that, by preventing the attendance of all but a

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<sup>3</sup> Because the setting of convention registration fees falls within the general authority the Bylaws give the National Committee and does not require *specific* authorization in the Bylaws, the claim in Petition, ¶ 6 that the setting of a convention registration fee “constitutes an amendment by the National Committee to the By-Laws” is without foundation.

handful of extremely wealthy delegates, it was intentionally designed to deter most delegates from attending the convention.

#### **D. Setting a Convention Registration Fee Did Not “Amend” the Convention Special Rules of Order**

The petition contends that the National Committee’s setting a convention registration fee “constitutes an amendment by the National Committee to the Convention Special Rules of Order.” Petition, ¶ 5. It is quite unreasonable, however, to assume that a registration fee would be the sort of thing included in the LP Convention Special Rules of Order. Their content wholly concerns procedure *at* the convention, not the conditions precedent for attending it. Special rules of order are those rules of order that supersede or supplement the rules of order contained in the parliamentary authority. RONR (11<sup>th</sup> ed.), p. 15, ll. 26-28. As a subset of rules of order, they are “written rules of parliamentary procedure . . . [that] relate to the orderly transaction of business in meetings and to the duties of officers in that connection.” *Id.*, ll. 7-11.<sup>4</sup>

Since convention registration fees are designed to recoup convention costs, which vary from convention to convention, it would make little sense to incorporate them in the LP Convention Special Rules of Order, which can only be altered *at* the convention – like trying to drive forward by looking in the rear-view mirror.

In short, since convention registration fees would not reasonably be part of the Convention Special Rules of Order, it cannot be concluded that the setting of convention registration fees somehow illicitly amends them.

#### **V. Conclusion**

The Bylaws specifically require that delegates register. The parliamentary authority designated by the Bylaws describes registration as including payment of a convention registration fee. Consequently, far from precluding a convention registration fee, the Bylaws authorize one. Requiring a convention registration fee does not infringe the authority state affiliates possess to

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<sup>4</sup> The LP’s approach to convention rules differs from that under *Robert’s Rules of Order Newly Revised*, the LP’s parliamentary authority. Under RONR, to govern their proceedings conventions adopt what are known as “Standing Rules of the Convention” which are proposed by a convention rules committee and adopted on the floor of the convention to “apply to that one convention only.” RONR (11<sup>th</sup> ed.), p. 618, l. 6. Although such convention standing rules, *unlike* the LP Convention Special Rules of Order, “usually contain both ‘parliamentary’ rules relating to the conduct of business, and nonparliamentary rules, so that in some ways they resemble a combination of special rules of order and ordinary standing rules [which deal with administrative matters],” *id.* at ll. 11-15, they would be most unlikely to set any convention registration fee that was being charged, because – being adopted only *after* the delegates have registered and been seated in order to vote on their adoption – they would be useless in setting a registration fee for any convention that did not have the benefit of a time machine. Indeed, the sample set of convention standing rules in RONR (11<sup>th</sup> ed.), pp. 622-624 contains no reference to a convention registration fee even though RONR contemplates that one will be collected, *id.* at 612.

choose the delegates to represent them, because it is uniformly applicable to all delegates and in no way interferes with the mode of delegate selection adopted by an affiliate. Because the National Committee is given plenary authority over the affairs of the Party, so long as its actions are consistent with the Bylaws, it possesses authority to set and enforce a convention registration fee; by contrast, the limited enumerated powers of the Convention grant it authority over the convention registration fee only through the bylaws amendment process.

Accordingly, the Judicial Committee should uphold the decision of the National Committee to set what even petitioners concede is the low convention registration fee of \$94, which is reasonably related to covering the cost of conducting the convention, and decline to enjoin the National Committee from requiring that convention registration fee.

Dated this 15th day of April, 2012

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