
IN THE JUDICIAL COMMITTEE

BRAD PLOEGER, ET. AL.

v.

LIBERTARIAN NATIONAL COMMITTEE, INC.

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

BRIEF OF PETITIONERS

QUESTION PRESENTED

On or about February 28, 2012, the Convention Oversight Committee (“COC”), a duly-commissioned sub-committee appointed by the Libertarian National Committee (“LNC”), announced a cost schedule for delegates to include a “minimum” fee of \$94 (“floor fee”) that would be required to be paid in order for delegates to attend and conduct business on the floor. Additionally on March 11, 2012, the LNC defeated a motion by Region 4 Representative Norm Olsen to make the floor fee optional. The vote thus mandated the floor fee upon all attending delegates of the 2012 National Convention. The question presented is whether the LNC exceeded its authority in placing an additional fee upon delegates of a national convention as a prerequisite for their participation in a business session of the Party in violation of one or more of the following provisions: *Bylaw 6.3*, *Bylaw 6.5*, *Bylaw 11.3(b)*, *Bylaw 11.10*, and/or *Bylaw 17.1*.

PARTIES TO THE PROCEEDINGS

Petitioners are Brad Ploeger (Georgia), Joseph Kidd (Georgia), George Phillies (Massachusetts), Jonathan Loesche (Florida), Carol Moore (District Of Columbia), paul frankel (Alabama), Alexander Avery (Indiana), Mark Hilgenberg (Utah), Jill Pyeatt (California), Doug Harman (Georgia), Wes Wagner (Oregon), Harland Harrison (California), Thomas Hill (Illinois), Heather Drollinger (Oregon), Courtney White (Utah), Michael Wilson (Washington), Mark Vetanen (Oregon), Rob Joyce (Michigan), Harry Joe Tabor (Oregon), Curt Wagoner (Oregon), Joseph Cornwell (Oregon), James Ogle (California), Jeanne Bojarski (Missouri), Less Antman (California), Phillip Laibe (Florida), Glynda Perrotte (California), Matthew Barnes (California), Jason Pye (Georgia), Eric Guess (Oregon), Curtis Wolf (Florida), Patrick Garrett (Florida), Jeff Edgens (Georgia), Anthony Papillion (Oklahoma), Kenneth Prazak (Illinois), Doug Craig (Georgia), Starchild Starchild (California), Darryl Perry (Texas), Chris Maden (Massachusetts), David Kornbluh (Georgia), Luke McKellar (Ohio), Steven Linnabary (Ohio), Charlie Earl (Ohio), Bob Bridges (Ohio), Adrian Wyllie (Florida), C. Michael Pickens (California), Cris Intagliata-Hooker (Florida), Sam Sloan (California), Calen Fretts (Florida), Allan Wallace (Tennessee), Robert Sherwin (Ohio), Tom Fretts (Virginia), Kevin Litten (Wisconsin), Cory Nott (California), Alonzo Garbanzo (Oregon), Nathan Eberly (Ohio), Brian Mumpower (Tennessee), Bruce Landers (Georgia), Richard Segal (Georgia), Tom Garrison (Utah), Richard Moroney (Florida), Matthew Cholko (Virginia), David Kocot (California), Thomas Stevens (New York), Don Webb (Georgia), David Terry (Oregon), Jarrett Dunning (Virginia), John Myers (Texas), Thomas Cornell (Nevada), Marc Montoni (Virginia), James Gholston (Texas), James J Jensen (Florida), Bob Williams (Ohio), John Wayne Smith (Florida), Lynn House (Florida), Shane Bryce (Georgia), Eugene Flynn (Texas), Aaron Yeargan (North Carolina), Michael Brown (Florida), Don Kissick (Ohio), Karl Dickey (Florida), Tom Ruks (New York), Karl Denninger (Florida), Pete Blome (Florida), S C (California), Debra Payne-Dedmon (Nevada), Beth Duensing (Indiana), David Montane (Georgia), Amanda Swafford (Georgia), Brian Irving (North Carolina), David Yett (Unknown), Mary Ruwart (Texas), John Clifton (New York), Richard Opheim (Washington), Scott Allen (Michigan), Jeff Weston (Oregon), Ben Valdez (Utah), Gerald Kosch (Nebraska), Stuart Simms

(Maryland), Kelly Barnes (California), Eve Berkson (Oregon), Anthony Wall (Tennessee), Crystal Gross (Georgia), Adam Brooks (North Carolina), Elaine Wilson (Washington), Doug McNeil (Maryland), Raymond Carr (Texas), Fred Mangels (California), Jay Polk (Tennessee), Vincent Marcus (Utah), Daniel Tobias (Florida), Ronald Bream (Oregon), Gale Morgan (California), Geoffrey Neale (Texas), Bryan Riddle (Georgia), Lee Brennise (Minnesota), Chuck Donovan (Georgia), Edward Gluck (Indiana), Barbara Howe (North Carolina), dick shaw (Tennessee), Derek Pomery (Maryland), Richard Prawdzienski (Oklahoma), Jason Hihn (Maryland), Richard Augenfeld (Oregon), TJ Campbell (California), John Lewis (Georgia), Joe Dehn (California), Jim Fulner (Michigan), Robert Jim Fulner (Michigan), Thomas Rhodes (Florida), José Castañeda (California), Mark McMains (North Carolina), Howard Schoen (New Jersey), Laura Conner (Georgia), Jason Sharp (Indiana), Bert Pickell (Indiana), Shane Killian (North Carolina), Chuck Moulton (Virginia), Len Flynn (New Jersey), Steve Dutner (Illinois), David Speight (North Carolina), George Reynolds (Maryland), Ibrahim Zallum (Colorado), Brandon Evangelista (Unknown), Beverly Wilcox (North Carolina), JR Enfield (Tennessee), Jacqueline Mason (Virginia), Mike Spalding (Colorado), David J. McDonough (Nevada), Thadius Main (District Of Columbia), Heather Fazio (Texas), Ethan Garofolo (Texas), Ian Kull (Texas), Benjamin Farmer (Texas), Brenda Kistler (Texas), John Spivey (Texas), Sterling Russell (Texas), Danny Anderson (Texas), Christine Rainwater (Georgia), Roy Hall (Texas), Gail K Lightfoot (California), Seth Hollist (Texas), Bob Townsend (Texas), Christopher Barber (Georgia), Anita Wright (Iowa), Matt Godown (Georgia), Orlando Mason (Virginia), Steve Susman (Texas), John McAchran (Texas), Scott Berkey (Vermont), Travis Peterman (Colorado), Arthur Torrey (Massachusetts), Bill Collins (Texas), Curry Taylor (Texas), Richard Hunter (Texas), Ruth Ferris (Oregon), Brian Stack (Rhode Island), David Perkins (Oregon), Aubrey Freedman (California), Elizabeth Richardson (Rhode Island), Hardy Macia (New Hampshire), Lisa Ringer (California), Tim Warnecke (Oregon), Howard L. Wilson (New Hampshire), Mary-Anne Wolf (Massachusetts), Chris Tate (North Carolina), Brad Fults (Texas), Michael Acree (California), Michael Kielsky (Arizona), Morgan Cambern (Arizona), Halina Reed (Arizona), Nathan Lowrie (Oregon), John Lindsay (Texas), Chris Will (Arizona), Arvin Vohra (Maryland), William Barker (Arizona), Brendan Kelly (New Hampshire), Shawn Fox (California), Andrea

Garcia (Arizona), Erik Viker (Pennsylvania), Jeffrey Haskovec (Texas), Christina Tobin (Illinois), Sabastian Piedmont (New York), Tanuja Paruchuri (Maryland), Eric Blitz (Maryland), Christopher Thrasher (New Jersey), John Parker (Oregon), Richard Jones (Oregon), Donald Mathews (Oregon), Rick Vandeven (Missouri), Juanita Billings (Virginia), Rita Neumann (New Mexico), Richard Whitehead (Oregon), Chrisitian Chirino (Rhode Island), Lisa Barba (Oregon), John A. Barba IV (Oregon), Richard Lion (Connecticut), John Wilford (Texas), Stephen VanDyke (Ohio), Mike Montchalin (Oregon), Jennifer Hopkins (Texas), Boyd Leyburn (Georgia), Laura Valle (Texas), James Oaksun (Maine), Richard Ploeger (Georgia), Brett Bittner (Georgia), Heather Kindrick (Texas), Hector Goodman (Georgia), Shawn Grissom (Nevada), Rdoget Paxton (Arkansas), Robert Underwood (Massachusetts), Joy Waymire (California), Alwin Hopfmann (Massachusetts), Julia Fox (Illinois), Stephen Meier (California), Ileana Zayas (Georgia), Wayne Chastain (Tennessee), William Sparkman (Texas), William Raddatz (Florida), Izaak Standridge (South Carolina), Erin Childers (Texas), William Nygren (Oregon), Carolyn Marbry (California), Josiah Neff (Georgia), Sarah Dompkowski (Maine), Charles Wilhoit (Tennessee), Patricia Wilhoit (Tennessee), catherine Wood (Florida), Matthew Schnackenberg (Florida), Neal Paulauskas (Florida), Bruce A. Knight (Oregon), Vicki Kirkland (Florida), Nicholas Wolf (Florida), Macy John (Florida), Robert Clark (Massachusetts), Anthony Spezio (Maryland), Rich Tomasso (New Hampshire), Janet Anderson (Washington), Erin Powers (North Carolina), Paul Blumstein (Virginia), Jane Heider (California), Michael Falagan (New Hampshire), Steven Wood (California), Gary Bryant (California), Robert Page (California), Casey Aplanalp (California), Kelly Wall (Tennessee), Gail Lightfoot (California), John Buttrick (Arizona), Ted Glenn (Arizona), Richard Schwarz (Pennsylvania), Yavanee Stubbs (Georgia), Aaron Gilmer (Georgia) and Paul Pence (Georgia). Petitioners have standing to bring this matter before the Judicial Committee pursuant to Bylaw 8.13. Respondent is the Libertarian National Committee, Inc.

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JURISDICTION

The Judicial Committee has jurisdiction over the issue according to the Bylaws of the Libertarian Party (“Bylaws”), specifically *Bylaw 9.2(d)*:

“Article 9: Judicial Committee

- 2. The subject matter jurisdiction of the Judicial Committee is limited to consideration of only those matters expressly identified as follows:
d. voiding of National Committee decisions (Article 8, Section 13),”*

Because the LNC delegated the authority to the COC to determine a delegate cost schedule, including the aforementioned floor fee, by extension the LNC voted to approve the floor fee, thereby putting the issue squarely under the jurisdiction of the Judicial Committee per the Bylaw referenced above. Furthermore, the vote at issue also gave LNC sanction to the floor fee, as explained below, to which the LNC lacked authority to do so. The decision to have the vote instead of ruling it out of order also falls under Judicial Committee jurisdiction under *Bylaw 9.2(d)*. Note that the wording of that clause is the broader term “decisions” and not the narrower term “votes.”

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STATEMENT

The floor fee is not only a bad idea, but it is one fully unsupported by the plain reading of the Bylaws. It is supportive of neither proper convention planning nor the personal and financial sacrifices of the delegates. The Libertarian Party (“Party”) exists not for its own sake but for the membership to give their voice to the political process. Imposing extraneous and unlawful hurdles upon members does nothing to grow the

Party or its voice in political affairs. In a time where libertarian thought and philosophy are gaining traction in the political arena and public thought, it is essential that the Party be available and open to those exploring it. Imposing hurdles to participation in the Party, when its membership is declining and its resources are stretched thin, does not advance liberty. In short, if it hurts the membership, it should not be done, and the LNC by way of this fee violated that simple mantra.

The Bylaws, both as they are currently written and from general common sense, do not allow a floor fee to be imposed by the LNC or its sub-committees, and it is imperative that the Judicial Committee take the concept of a floor fee and discard it once and for all.

ARGUMENTS PRESENTED

1. The National Committee cannot shield decisions through delegation of power to its sub-committees.

The delegation of the authority to the COC by the LNC to set a floor fee does not exempt the matter from Judicial Committee jurisdiction, because the decision to delegate that authority, while valid under *Bylaw 6.1*, does not create any exemption from further jurisdiction. If that were to be understood the case, then the LNC could simply delegate all of its authority to numerous committees stacked with its own members and serve as a rubber-stamp for the decisions made within those committees, bypassing the Judicial Committee, which is not what the delegates intended in the Bylaws.

2. Judicial Committee jurisdiction covers all decisions of the LNC and not simply votes upon main motions.

The wording of *Bylaw 9.2(d)* refers to “decisions” of the LNC, not their “votes.” The plain language reading of that wording indicates that the delegates intended the Judicial Committee to have a wider purview over the LNC than just their votes on main motions. A decision of the LNC includes, in part, Rulings of the Chair, allowance of Points of Order and other parliamentary processes, and administrative activities of the Party as conducted by the LNC, its employees and sub-committees. Admittedly this

purview could be taken to its logical absurdity by having every single action of the LNC subject to Judicial Committee appeal, but that is not germane to the issue at hand. The delegates have addressed the wording of the Section to what they feel is the proper scrutiny, and as such it is utilized and claimed here. The act of appealing a decision of the LNC to the Judicial Committee is a complex act which serves to prevent its application except for significant matters.

3. The Bylaws establish the requirements in order to be a delegate to a national convention.

Delegates to the National Convention are selected by each state affiliate according to their own state Bylaws and are subject to the provisions of *Bylaw 11.3*:

“Article 11 Conventions

3. Delegates:

- a. Delegates shall be required to be members of either the Party or an affiliate party. At all Regular Conventions delegates shall be those so accredited who have registered at the Convention. At all Non-Regular Conventions, any person who wishes to attend may do so.*
- b. Any federal or state law to the contrary notwithstanding, delegates to a Regular Convention shall be selected by a method adopted by each affiliate party; provided however, that only members of the Party as defined in these Bylaws, or members of the affiliate party as defined in the constitution or bylaws of such affiliate party, shall be eligible to vote for the selection of delegates to a Regular Convention.”*

The wording in *Bylaw 11.3(a)* defines what a delegate is, namely, *“those so accredited who have registered at the [National] Convention.”*

The wording in *Bylaw 11.3(b)* defines how delegates are selected, namely, *“by a method adopted by each affiliate party; provided however...”*

In summary, *Bylaw 11.3* defines delegates as national Party or state affiliate party members being selected by the state affiliate members and registered and accredited at the Convention.

Bylaw 6.5 explicitly prohibits the LNC and the COC from infringing upon the authority of the state affiliates except as provided for in the Bylaws. The Bylaws do not allow for infringing upon state affiliate delegation selection by imposing a fee upon those delegates. *Bylaw 6.3* explicitly states that the state affiliates determine their Convention delegates:

“Article 6 Affiliate Parties

- 3. There shall be no more than one state-level affiliate party in any one state. 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. A state-level affiliate party may charter sub-affiliate parties within the state, which will entitle such sub-affiliates to use the name “Libertarian Party.”*
- 5. 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.”*

Put together, *Bylaw 6.3* and *Bylaw 6.5* vest the authority to determine delegates to the Convention exclusively with the state affiliates, and as such, no such authority is vested with the LNC, the COC, or any other committee, including the Credentials Committee.

That is to say the LNC has no authority to deny any delegate, who is duly and properly selected by the state affiliates, registration or credentialing to the floor to vote on party business. That lack of authority to deny includes the payment fee. In fact, the only Bylaws provision regarding accepting or denying delegates is *Bylaw 11.5(e)*, which vests that authority in the Convention delegates themselves. The Credentials Committee may only register delegates, give them their delegate badge and credentials, and accept any optional Convention package purchase funds. Credentialing disputes are forwarded to the Convention body for their resolution. Note that a Convention package purchase which includes seminars, workshops, and meals is considered optional and no delegate is, nor should be required, to purchase them since those activities surround the Convention but not part of the business meeting itself. The ancillary events at the Convention serve functions other than the administration of the Party.

That means the COC 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, and infringes upon the autonomy and exclusivity of the state affiliates to determine their own delegates. As such, any floor fee imposed by the LNC or the COC is in clear violation of *Bylaw 6.5*. Furthermore, Judicial Committee precedent states that actions “*beyond the authority of the LNC or [Executive Committee] based upon the Bylaws...[are] void*” *Wagner v. LNC (2011)*.

The adopted parliamentary authority of the Party pursuant to *Bylaw 16* further 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 (11th 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.

Combining the clauses of *Bylaw 11.3*, with *Bylaw 6.3* and *Bylaw 6.5*, the conclusion is the following:

- a. Delegates are state or national Party members chosen by state affiliate members.
- b. Delegate selection is the exclusive act of the state affiliates.
- c. State affiliate activities in determining its delegates cannot be infringed upon by the national organization by imposing further requirements to be a delegate, including a floor fee.
- d. A Convention package is an optional purchase and not a requirement to be a delegate.

4. The LNC may not exceed the explicit authority granted under the Bylaws.

It should be noted that Bylaws exist to establish a structure and limited set of rules of operation for an organization. The Bylaws are adopted by the delegates in order to guide the affairs of the Party between National Conventions. The delegates amend the Bylaws by adopting specific wording to accomplish specific purposes. It is understood that the explicit wording of the Bylaws reflects the will of the delegates, with

the words being specific in their meaning, and what they authorize is listed in the Bylaws, and also what they do not authorize is not listed in the Bylaws. As such, in the general case, the Bylaws do not confer unlimited power upon the LNC or any delegated committee such as the COC, and in the specific case, the power to impose any further requirement upon a delegate to the Convention, including a floor fee. If the Bylaws do allow for the LNC and its delegated committees to assume unlimited implicit powers beyond the explicit powers granted to the LNC by the delegates, then there would be little point to having any Bylaws at all. A Bylaw only enables that which it states and nothing more. *“If the bylaws authorize certain things specifically, other things of the same class are thereby prohibited.” RONR (11th ed.), p. 589, ll. 33-34.* Furthermore, one must look to the precedent of the Judicial Committee’s previous rulings: *“It is clear from other sections of the Bylaws that when the delegates intend to make a provision mandatory, they are capable of enacting clear language to that effect” Wrights v. LNC (2009).*

The LNC may not engage in practices outside the explicitly limited powers and procedures contained in the Bylaws: *“When...the Bylaws do not contain specific enforcement procedures...the ambiguity is resolved in favor of the existing default procedures” Wrights v. LNC (2009)* The ruling in *Wright v. LNC (2009)* is applicable here in that once again the LNC is attempting to operate outside the explicitly limited powers and procedures of the Bylaws, by engaging in activities that it has no authority to do, to the detriment of the delegates.

5. The Party’s adopted parliamentary authority is being misapplied.

Robert’s Rules of Order, Newly Revised (RONR) has been cited as allowing a floor fee. However, the section cited notes that registration and credentialing “normally” involves paying a fee. This specific section is *RONR (11th ed.), p. 612, ll. 6, 11-14:*

“Registration — which normally includes these steps:

- c) Recording of the member as officially registered, upon his paying the registration fee (which is sometimes sent in advance) and signing the list of registrations; and”*

However, the plain language in the section is of a descriptive example and not a requirement. 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. It is not specified in the Bylaws. Absent any such explicit authorization in the Bylaws, no floor fee is authorized. Moreover, the adopted parliamentary authority is subordinate to provisions of the Bylaws and in the case of any conflict the Bylaws control.

6. The vote of the LNC against making the floor fee optional gave it sanction.

The failed main motion of the LNC to make the floor fee optional, by its nature of being considered in order by the Chair, gave LNC sanction to the floor fee, which as shown above, is in violation of the Bylaws.

The proper procedure should have been for the Chair to rule the main motion out of order because the fees were not authorized under the Bylaws, which would have made the main motion not germane to the business of the LNC --and this entire dispute as well. As such, the motion itself was based on an improper foundation and never should have been considered at all, because the floor fee is not valid.

7. The cost of conducting a national convention does not allow the LNC to disregard the Bylaws.

Proponents of the floor fee have argued that the costs associated with the Convention require a floor fee by delegates to cover its costs. The Convention is the one event the LNC is obligated to hold for the delegates. Poor planning by the COC and LNC is no reason to impose penalties of further costs upon the delegates, many of which expend considerable time and money just to travel and attend the convention. The delegates should not be paying for the mistakes of the COC and the LNC.

The proper way for the floor fee to be addressed is by an amendment to the Bylaws to explicitly authorize such a fee. Proposals to that effect were considered by the 2010 Bylaws Committee and subsequently removed from their committee report prior to the 2010 Convention. Such a proposal could take two forms:

- a. Explicitly authorizing a floor fee for the Convention; or
- b. requiring that a fixed dollar amount or fixed percentage of each sustaining membership amount be allocated to cover Convention costs with no further required payment by delegates.

Either proposal would resolve the issue under the proper party procedure and provide a definite solution to the pending dispute.

8. If the LNC has the power to impose a floor fee then that authority is unlimited.

While the floor fee under consideration by the Judicial Committee is only ninety-four (\$94) dollars. If we continue the logic that the LNC holds the authority to impose an arbitrary fee; then, could in 2014 the fee be \$194 prior to registration? While this may seem to be unlikely, the logic used to grant the LNC authority would follow to this conclusion. What would constitute the limit upon the LNC's authority? No Bylaw considers this matter. Under the foregoing hypothesis the delegates to a convention would be subordinate to the LNC. This would constitute a repudiation of the Bylaws.

In fact the one fee specifically defined in the Bylaws is the amount required to become a Sustaining Member of the Party. The Delegates in *Bylaw 5.3* decided that \$25 is the amount required to be a Sustaining Member of the Party. If the delegates desired an additional fee to participate in the business of a convention would they not have designated a specific amount in the bylaws. The specific silence of the delegates of a floor fee is vital to consider in determining the desires of the delegates.

Furthermore, if the LNC is able to exercise unlimited authority over the delegates to a Convention would that ability also allow them to amend the Convention Special Rules of Order at will? *Bylaw 11.10* clearly states that the "Convention Special Rules of Order may be amended only by a Regular Convention."

9. Allowing a floor fee without specific authorization of the Bylaws weakens the rules of the Party.

If the Judicial Committee decides to allow a floor fee absent an amendment to the Bylaws allowing such, then the net impact will be that the Bylaws are meaningless and that the LNC and its assorted committees have unlimited power over the members.

That ultimately will drive people from the Party instead of growing it, and could eventually lead to its destruction. Furthermore, such action would flip the structure of the Party from that of an organization where the members have the final say in issues to one where they have no say, because the Bylaws can be violated and ignored at will. Such a view would also essentially give the LNC the power to amend the Bylaws at will in direct violation of *Bylaw 17.1*. It would also undermine the delegated authority of the Judicial Committee.

Lastly, such a decision is frankly repugnant in nature because libertarians advocate minimal government and personal freedom and responsibility. The vesting of unlimited power in the governmental structure of the Party is a direct contradiction of our Party's stated values. It would make the Party not one of principle, but of hypocrisy.

CONCLUSION

It is requested that the Judicial Committee adjudicate that a floor fee for the Convention violates the Bylaws and is not permitted until such time that the delegates pass an amendment to provide authorization. The basis of this adjudication is that the LNC violated the Bylaws imposing of a floor fee. The Bylaws reserve delegate selection and determination exclusively to the state affiliates and are not subject to further requirements imposed by the LNC or its committees. It is requested that the Judicial Committee issues a clear and unequivocal statement that the powers delegated to the Party and the LNC by its delegates and members are explicitly delineated in the Bylaws.

Respectfully submitted.