

I had not planned to write anything to the Judicial Committee. However, I was forwarded some briefs by Brad Ploeger and it makes me shake in anger at how filled with non sequiturs they are.

I realize it is past the deadline for submitting briefs to be considered by the JC. However, I'm going to give my 2 cents and any JC member who wants to read it can do so.

I'll respond point by point to each brief.

Brief from the Convention Oversight Committee

The Convention Oversight Committee brief presents practically no bylaws arguments and thus seems totally irrelevant to this case. However, it was so filled with egregious errors about policy that I felt compelled to respond to its nonsense.

Convention Oversight Committee brief (p. 1):

*This basic principle-that no one has a claim on the Life, Liberty or Property of another-is the basis for our Party and our philosophy. However, the Petitioners seem to have forgotten this basic Principle. They are demanding that others be forced to subsidize their attendance and participation in our Convention. In any dispute involving the interpretation of our Bylaws, we must never contravene our basic Principle: **No one may demand the unwilling support of another.***

A decision by the Judicial Committee that Delegates are not responsible for their share of the costs of a Convention would put that burden on others who have not agreed to accept it. That violates the fundamental Libertarian Principle. For that reason alone this Petition must be denied.

The subsidization canard is pervasive in this brief. They have the direction of subsidization reversed. The delegates are providing a service to the members by doing the party's required business. By providing their time and paying for their travel, lodging, etc. any so-called free delegates are subsidizing the membership that did not make it to the convention. What the convention oversight committee wants is for delegates conducting party business to subsidize the wishes of others to have a big party at a fancy hotel with expensive speakers and meals. In fact a convention could be run much more cheaply at a less expensive venue in a less expensive city.

Convention Oversight Committee brief (p. 1):

The idea that some misapplied principle about subsidization should trump the bylaws is absurd.

Few, if any, of the petitioners are aware of the costs involved in running a national convention, and mistakenly believe that the cost per person should be what they might expect for a state convention.

Five individuals signing this brief have experience running nine national conventions, and can tell you from experience that common costs are significant at a national convention. For example, a state convention with 50 people may not require the use of any audio-visual equipment. When you have a convention with over 500 in attendance, it's

mandatory to have big screen monitors and sound systems, otherwise the people in the back half of the room will not be able to see or hear what's going on. In some years we have spent as much as \$40,000 on A/V alone!

Here are the common costs that we estimate are currently required for the 2012 Convention

The list makes two things abundantly clear:

1. The Convention Oversight Committee has overpaid for many things, and wishes to pawn those expenses off on delegates who merely want to do party business.
2. The Convention Oversight Committee is classifying items as common cost which in fact are not, subsidizing those who want a fancy convention with money from those who wish to conduct party business.

The following expenses have nothing to do with the business session:

<i>Awards</i>	<i>1,800</i>
<i>Speakers</i>	<i>6,000</i>

Nothing in the bylaws or the convention rules necessitates "awards". Awards may be nice, but they are not a common cost that should be paid for by anyone who attends the business session. It is unclear whether "speakers" refers to fees for people who speak (which are not appropriate for the business session) or for devices that you plug in to project sound (which presumably should be included under "audio-visual costs").

The following expenses are only party related to the business session:

<i>Staff Lodging</i>	<i>2,932</i>
<i>Staff Meals</i>	<i>2,750</i>
<i>Staff Travel</i>	<i>3,200</i>

Staff helps with both the business session and the other events. Thus staff cost is only a common cost pro-rated to the percentage of time they spend on the business session relative to all of their work hours.

The following expenses are outrageously expensive for what we need:

<i>Audio-Visual Costs</i>	<i>23,000</i>
<i>Decorations, Balloons and Draping</i>	<i>5,000</i>
<i>Parliamentarian</i>	<i>1,100</i>
<i>Printed Materials</i>	<i>1,500</i>
<i>Shipping</i>	<i>3,000</i>
<i>Signage for Seating</i>	<i>1,000</i>
<i>Website</i>	<i>1,500</i>

For \$23,000 the LP ought to be able to buy AV equipment rather than renting it every convention. If some want fancy decorations, then they should pay for those themselves. Those who simply want to attend the business session should not be forced to finance the ambiance others want. A volunteer parliamentarian (or several switching off) could be found. In this day and age materials could be made available online for delegates to access from their laptops or iPads rather than forcing delegates to pay

for printed materials. I don't know what needed to be shipped. Signage can be made much more cheaply, though less fancy. A website should not cost that much.

These choices of purchases all could be reasonable if people voluntarily choose to pay for that type of convention. But here the Convention Oversight Committee has demanded that it be able to force anyone who wants to participate in the business session to pay the costs, so ensuring the spending is not profligate becomes more important.

Convention Oversight Committee brief (p. 2):

It all adds up to a lot of money, and most of these costs would exist even if we held the event in a public park!

With close to \$60,000 in common costs – and that figure does not include the \$40,000 for food and beverage and the 1,125 hotel room nights required to get the convention hall for “free” – we need to be fiscally responsible to the Party and all our members.

The most legitimate common expense is AV costs. That expense is ridiculously inflated. We are a volunteer organization. With 2 years of planning we should be able to find LP members who can loan AV equipment. Or just buy it once instead of renting it every year. Most of these other expenses in fact are not necessary and would not accrue in a public park. Though of course a public park would be vulnerable to bad weather (rain) or require large tents, which is a big net negative.

Convention Oversight Committee brief (p. 2):

Some may believe that holding a national convention is the Libertarian Party's main purpose. However, of the eight purposes described in Bylaw Article 3, nominating a candidate for President is only one – and there are insufficient funds for the LNC to fund all of the party's purposes. While there is an obligation to hold a convention, there is nothing in the Bylaws stating who is required to pay for it or prohibiting those attending from paying a share of the costs.

The Convention Oversight Committee is confusing party purposes (nice things we would like the LP to do) with bylaws required activities (things the party must do). See bylaw 11.1. There do not need to be enough funds to cover all of the party's purposes. There do need to be enough funds to cover its required activities mandated by the bylaws.

Libertarian Party Bylaws:

ARTICLE 3: PURPOSES

The Party is organized to implement and give voice to the principles embodied in the Statement of Principles by: functioning as a libertarian political entity separate and distinct from all other political parties or movements; moving public policy in a libertarian direction by building a political party that elects Libertarians to public office; chartering affiliate parties throughout the United States and promoting their growth and activities; nominating candidates for President and Vice-President of the United States, and supporting Party and affiliate party candidates for political office; and, entering into public information activities.

ARTICLE 11: CONVENTIONS

1. Regular Conventions:

The Party shall hold a Regular Convention every two years, at a time and place selected by the National Committee. Regular Conventions shall be held sometime during the period of July of an odd-numbered year through August of an even-numbered year. All business required to be conducted at Regular Conventions shall be conducted at Regular Conventions only.

Convention Oversight Committee brief (p. 2):

Some argue that membership dues ought to be sufficient to cover the cost of a convention, but there are two problems with that position.

First, we only have around 12,000 non-life members who are each required to pay \$25 annually (set in the bylaws) to sustain membership in the LP. It's not possible to cover even the basic overhead of an office on \$300,000 per year let alone absorb the costs of a national convention every other year.

The bylaws do not require an office and staff. The bylaws do require a convention. An office comes second to a convention.

Convention Oversight Committee brief (p. 2):

Second, there is no requirement in the bylaws for a delegate to be a dues-paying member of the Party. It is theoretically possible for all the delegates at a national convention to be only members of affiliate parties, not the National Party. So why should only sustaining members of the National Party be asked to shoulder the entire burden?

The delegates conduct party business for the benefit of the membership. A conscious decision was made in crafting the bylaws to allow non-members of national to conduct that business. That doesn't make it any less for the benefit of the members.

Convention Oversight Committee brief (p. 2):

Delegates, Alternates and other attendees incur costs for their transportation to the Convention site. They pay for their accommodations. They pay for their meals. Are the Petitioners suggesting that someone else pay for these costs, too?

No. This is a straw man argument.

Convention Oversight Committee brief (p. 2):

Shall we require those that can afford to fly to pay into a fund to pay for the bus tickets of others?

No. This is a straw man argument.

Convention Oversight Committee brief (p. 2):

Should those who can afford a hotel suite be forced to pay for standard rooms for others?

No. This is a straw man argument.

Convention Oversight Committee brief (p. 2):

If we start calling the cost of an airline ticket a fee or the nightly rate at a hotel a fee, does that make it no longer allowable to charge the Delegates for those costs?

No. This is a straw man argument.

Convention Oversight Committee brief (p. 2):

Just calling the costs a “fee” does not absolve the Delegates the responsibility to pay their share of the overhead and common costs.

The term “their share” is loaded and falsely conveys that they owe something here. They don't. They are providing a service to the membership.

The Convention Oversight Committee basically provided a laundry list of things people pay for, then gave the implication “why not spend money on this one other thing too?” They could have just as easily said at the end “Why is it then wrong to require them to each donate \$500 to the presidential campaign?” Just because delegates pay a bunch of money for other things doesn't mean they have an obligation to pay for another thing on top of that.

Convention Oversight Committee brief (p. 3):

There are five basic approaches for how to pay for convention costs:

- 1) Require that some delegates pay more so that others may pay less or not at all.*
- 2) Require that non-attending members pay for those who are attending.*
- 3) Require taxpayers to pay for our events, as do the Republicans and Democrats.*
- 4) Request that others voluntarily contribute to pay for those who can't or won't pay.*
- 5) Require that all attendees pay for their share of the costs.*

The last two options are permissible under our Principles. The first three are not.

False. Only option 3 is not permissible under our principles. We've been doing option 1 for 40 years. Option 2 makes the most logical sense for a normal corporation or non-profit or political party. Option 4 glosses over the fact that it is permissible under the law for conventions to seek corporate sponsors – only laziness on the part of the Convention Oversight Committee has prevented this from happening. Many Libertarian businesses that can't donate to the LP would be happy to donate to its convention. Option 5 of course contains the usual loaded, incorrect language: “their share” implies delegates owe something, which of course they do not.

The delegates are attending the convention for the benefit of the organization and the membership, not for their own benefit. This is the key point that those who throw around diminutive, loaded phrases seem to be missing.

In my opinion the best analogy to drive the point home is a wedding.

Weddings can be very expensive (depending on the venue). When I attend a friend's wedding, not only does he pay for the facility, flowers, and photography; but also for alcohol, catering, and cake consumed by the wedding guests. Cost per person has a wide range (\$20/person at the low end, \$500/person at the high end).

I have never been sent a bill for my “share” of the wedding costs. Why is that? I must pay to get there, pay for accommodations, pay for electronic gadgets, pay for pet sitting, pay for clothes, and so forth. Why then is it wrong to expect me to pay “my share” of the basic overhead to run the wedding?

The simple answer is even though I am attending the wedding, the wedding is not for my benefit. The wedding is for the benefit of the bride and the groom; thus the bride and the groom bear the cost of the wedding.

Similarly, it is a mistake to assume that just because delegates attend a convention, the delegates should necessarily be responsible for a “fair share” of convention costs.

Could a wedding be arranged at which cost is distributed among the guests? Yes. Could a convention be arranged at which cost is distributed among the delegates? Yes.

But it is insulting to jump to the conclusion that those who believe delegates should not be assessed for the cost of facilities for the business session are somehow irresponsible or un-libertarian. If floor fee advocates would stop talking down to those who have a different perspective on who ought to bear the cost, then we can start to have an adult conversation about the best way to budget for conventions.

Another similar analogy: we don’t expect paid LP staffers to cover the cost of office rent out of their own pockets simply because they work in the building. Nor apparently does the convention committee think LP staffers should pay for the costs of them attending the LP convention. Just because they are physically there does not mean they are morally responsible for the cost of the room.

Convention Oversight Committee brief (p. 3):

In many past Conventions much of these basic costs were borne by those who bought more expensive packages. Losses from these events were borne by those who didn’t attend. After discussing the philosophical underpinnings of how we operate conventions, this Convention Oversight Committee (which has a broad spectrum of members) came to the unanimous conclusion that this was an involuntary transfer of assets from one group to another and that the basic overhead should be apportioned among everyone who attends.

That conclusion was in error. And it is not allowed under the bylaws.

LP convention organizers have been trying to charge a floor fee for decades. Saner minds from the LNC and the membership have prevailed up until this point. Of course organizers would like forced revenue. You can get a lot more money when you mandate things. It’s not allowed under the bylaws though.

Convention Oversight Committee brief (p. 3):

We did not believe it to be fair or principled for some package purchasers to be required to subsidize those unwilling to pay their share of the costs, so we developed the There Ain’t No Such Thing As A Free Lunch package. A pro rata share of the convention costs is built into the price of every package, not just the TANSTAAFL package. To say that no one attending should pay for the overhead costs means removing that \$94 cost from every package. Currently we have sold 427 packages of all kinds. Requiring us to refund

that \$94 from every package sold leaves a \$40,000 hole in our budget right now. How would the Judicial Committee suggest that hole be filled?

Lack of planning on your part does not constitute an emergency on the part of the Judicial Committee.

Those who want to force through a fee that violates the bylaws have engineered this “emergency” situation from the beginning. The LNC picked an expensive city. The LNC picked an expensive venue. The LNC signed a bad contract, which subsequently had to be re-negotiated not to lose even more money. The convention oversight committee wildly overspent on the convention. The convention oversight committee chose high fees and mediocre crowd draws rather than marketing the convention well to potential attendees in order to expand attendance. And now the convention oversight committee says it could lose a lot of money without the fee. All of these decisions were made by people who have publicly said for years that they want to impose a mandatory floor fee. They have engineered a bad situation to try to back the JC into a corner to rule their way.

Don’t be bullied.

There will likely be record attendance due to Gary Johnson’s wave of supporters. Many state delegations are full. If this convention can’t find a way to make money with record attendance, then they are simply incompetent morons. Sorry, there is no way to sugar coat that.

I suggest that the \$40,000 hole be filled by the sanctimonious bullshit of the Convention Oversight Committee and the Libertarian National Committee. They seem to have quite a lot of that.

Convention Oversight Committee brief (p. 3):

There have been some concerns that charging everyone attending the 2012 Convention will be an excuse to start charging delegates excessive amounts in order to limit attendance at future conventions. We know of no reason not to limit, in our Bylaws, the amount that can be charged. At least most of us on the Convention Oversight Committee would support a limit of \$100 per attendee to cover the reasonable and customary overhead costs and will vote in favor of such a limit if proposed.

The Libertarian Party of California started out with a floor fee of \$25. Its business session cost \$220 last year. When package purchase becomes mandatory the convention committee loses all incentive to contain costs.

You can be sure that assurances that the fee will remain low will be brushed aside in the future if the door is opened for a floor fee. Once it is deemed allowed by the bylaws, nothing limits the LNC from charging \$10,000 per delegate. It may be argued that the solution to this is the ballot box: vote a LNC that does something stupid like that out of office to deter them from making such a decision. However, this misses the fact that voting them out of office may be impossible when they get to decide who can vote with their fee. There is no political check when the LNC can restrict access to the floor.

Convention Oversight Committee brief (p. 3):

But if Principle alone is not enough to convince this Judicial Committee to deny this Petition, then please consider the submission included as part of our brief authored by Thomas Balch, one of the authors of Robert’s Rules of Order Newly Revised (RONR). Mr. Balch is one of the world’s leading authorities on parliamentary law. His analysis of our

Bylaws and RONR lead him to the conclusion that a registration fee is allowed. (Please see attached document)

In addition, the Party's attorney, Gary Sinawski, wrote a memo as to the legal implications of charging attendees the share of the costs and concludes that there are no legal barriers and a second memo about the unique conditions in Florida. Even should you decide that Florida law precludes charging those delegates, a position not wholly supported by Mr. Sinawski, there is no reason to allow everyone else to be a "free-rider!" (Both memos attached)

We believe you'll conclude as we have that the only reasonable and principled position is that the people who incur the costs be responsible to pay them. Those costs are incurred by every attendee at this Convention by attending, just as costs are borne by every passenger on an airplane or every guest sleeping in a hotel room.

To find otherwise is to negate the very Principle this Party is based on.

We urge the Judicial Committee to deny the Petitioner's claim and rule that collecting each person's portion of the costs of the Convention is not a violation of our Bylaws and is, instead, an affirmation of our basic Principles.

I find no foundation for the so-called "principle" the Convention Oversight Committee has tried to inflict on the Libertarian Party.

Their central point seemed summed up by this excerpt.

Convention Oversight Committee brief (p. 3):

There are five basic approaches for how to pay for convention costs:

- 1) Require that some delegates pay more so that others may pay less or not at all.*
- 2) Require that non-attending members pay for those who are attending.*
- 3) Require taxpayers to pay for our events, as do the Republicans and Democrats.*
- 4) Request that others voluntarily contribute to pay for those who can't or won't pay.*
- 5) Require that all attendees pay for their share of the costs.*

The last two options are permissible under our Principles. The first three are not.

They claim requiring that "some delegates pay more so that others may pay less or not at all" violates basic libertarian principles. But for 40 years many libertarians have assembled together. Not once did they as a body find fault with this setup and pass a resolution or a bylaws amendment to change the practice. The Convention Oversight Committee claims to have a better command of libertarian principles than 40 years of our most dedicated activists in convention. I disagree.

In fact, libertarians have decided the opposite. They have decided that it violates our principles to demand a fee to participate in the business session. I served on the 2010 Bylaws Committee. In that capacity I submitted the following proposal, which was adopted by the Committee.

2010 Bylaws Committee Report (p. 44):

Prohibit a Convention Registration Fee (Recommended 5-3)

Problem: Our bylaws neither explicitly prohibit nor explicitly allow charging convention delegates a registration fee.

Solution: Explicitly prohibit charging delegates a mandatory registration fee to participate in Convention business.

ARTICLE 11: CONVENTIONS

3. Delegates

c. Delegates shall not be required to pay a registration fee to be credentialed or to access the floor for business sessions.

Proviso: This amendment shall take effect upon the close of the convention at which it is adopted.

Unfortunately the Bylaws Committee report was so long that the delegates did not get a chance to vote on this amendment. However, we do have evidence on their preferences from the Bylaws Committee survey electronically distributed to the membership before the convention.

2010 Bylaws Committee survey (p. 1):

41.0 Prohibit a Convention Registration Fee (5-3)

686 people responded to the survey

592 of the respondents were LP sustaining members

85.8% of survey respondents who were LP members were in favor

86.7% of survey respondents were in favor

Not only have 40 years of Libertarian Party convention delegates decided not to pass a resolution or bylaws change in favor of a floor fee, but additionally as recently as 2010 a broad spectrum of libertarians overwhelmingly indicated they want a fee to be prohibited.

This directly contradicts the assertions of the Convention Oversight Committee that not charging a floor fee would violate libertarian principles. In fact I find their views embarrassingly out of touch with the membership.

Memos from Gary Sinawski on Florida Poll Taxes and Morse

I think the poll tax argument is the weakest. I don't want to respond to this without doing a lot of legal research, and I don't have sufficient time to conduct such legal research. So I will leave these memos unaddressed.

Brief from Thomas Balch

The brief from Balch reads like many of his other briefs and parliamentary opinions commissioned by the LNC, allowing the LNC to do pretty much whatever it wants. He seems to come from the perspective of a government of unlimited powers, which libertarians by principle reject.

II.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 (*Balch heading*)

Balch brief (p. 4):

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.

Just because registration “normally includes” paying a fee doesn’t mean a fee is thereby authorized.

Balch and others basically assert that authorization can be found by the Libertarian Party bylaws pointing to RONR and RONR pointing to what the majority of organizations have in their bylaws and do by custom. There are many things that are normally done which are contradicted by bylaws in general and the LP bylaws specifically. The bylaws take precedence.

I don’t believe our bylaws explicitly allow a fee or explicitly forbid it; however, the bylaws do implicitly forbid a fee by listing qualifications and not listing payment of fee as one of those qualifications.

This is clearly a gray area because it is not made explicit. In interpreting, the implicit arguments have to be weighed against one another. In this case I would look at principles of interpretation and custom.

Custom is straightforward. We have never charged a mandatory registration fee or a floor fee for business sessions in the Libertarian Party’s 40 year history. This leads me to the conclusion that for the purposes of our organization, registration does not “normally include” a fee.

A principle of interpretation is on point. “If the bylaws authorize certain things specifically, other things of the same class are thereby prohibited.” RONR (11th ed.), p. 589, I. 33-34. In this case the bylaws list qualifications for being a delegate. Imposing other qualifications that are not listed in the bylaws is therefore prohibited.

The word “normally” is important.

What I have been alluding to with the phrase “Registration — which *normally* includes these steps” [emphasis added] is a canon of statutory construction called the rule against surplusage (alternatively, the presumption against statutory surplusage or the superfluous language canon).

Here is one expression of that principle from the CRS’s Statutory Interpretation: General Principles and Recent Trends (page 12):

<http://www.fas.org/sgp/crs/misc/97-589.pdf>

A basic principle of statutory interpretation is that courts should “give effect, if possible, to every clause and word of a statute, avoiding, if it may be, any construction which implies that the legislature was ignorant of the meaning of the language it employed.” The modern variant is that statutes should be construed “so as to avoid rendering superfluous” any statutory language.

In this case the phrase “Registration — which normally includes these steps” is interpreted by me so it doesn’t mean the exact same thing as “Registration — which ~~normally~~ includes these steps”.

Robert and Balch routinely do not employ generally accepted principles of statutory construction to bylaws and to RONR (which are common sense and logical ways of resolving ambiguities) when they write professional opinions for the Libertarian National Committee. This is the main reason I have found their opinions unpersuasive.

Balch brief (p. 4):

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 (11th 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

For example, the National Association of Parliamentarians charges a fee to attend their convention. That fee, and the right to charge it, is defined in their bylaws.

National Association of Parliamentarians bylaws (p. 7, l. 337-340):

<http://parliamentarians.org/getdocument.php?id=29>

B. Criteria.

1. A member of NAP, who is registered as in attendance, has paid the appropriate registration fee, and meets either of the following requirements may vote at the district conference:

National Association of Parliamentarians bylaws (p. 10, l. 491-493):

<http://parliamentarians.org/getdocument.php?id=29>

B. Voting Body. The voting body of the convention shall be comprised of the following NAP members who are delegates registered as in attendance and who have paid the appropriate registration fee:

National Association of Parliamentarians bylaws (p. 12, l. 568, 592-594):
<http://parliamentarians.org/getdocument.php?id=29>

*B. Duties of the NAP Board of Directors. The NAP Board of Directors shall:
10. determine the place, date, time, and registration fee for the biennial convention, the
NAP Training Conference, membership meetings, and the Leadership Conference;*

Balch criticizes petitioners for providing no authority that a registration fee is usually specified in bylaws. Here I have quoted from the bylaws of the National Association of Parliamentarians, which awards the Professional Registered Parliamentarian title both Thomas Balch and I hold. Balch apparently thinks an organization composed entirely of parliamentarians opted to authorize a registration fee in its bylaws even though RONR does not list this as a provision that should be included in bylaws and Balch believes mention of it is superfluous.

II.B. Rules In the Parliamentary Authority Relating to Members May Not Be Improperly Applied to Delegates (Balch heading)

Balch brief (p. 5):

*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 (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.

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.

I agree with Balch that this is a weak argument by petitioners and should be discarded.

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 (Balch heading)

Balch brief (pp. 5-6):

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.

Neutrality in application is irrelevant.

Delegates are selected by state affiliates. We have this system of representation rather than an “any member who shows up votes” system partly to guarantee state affiliates representation of their interests in proportion to their level of activity (as judged by membership and presidential vote totals).

If the credentials committee refuses to seat delegates elected by the commonwealth of Virginia consistent with the national bylaws, then Virginia has been denied part of its representation to the national convention.

IV.A. The Bylaws Grant Plenary Authority to the National Committee But Only Enumerated Powers to the Convention (*Balch heading*)

Balch brief (p. 6):

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.”

Petitioners’ point was that only convention delegates may amend the bylaws, which makes them the ultimate authority.

The “plenary control” of the Libertarian National Committee is subject to the bylaws, which is plainly evident from LP Bylaw 8.1.

B. The Plenary Authority Granted by the Bylaws to the National Committee Includes the Authority to Set Fees (*Balch heading*)

Balch brief (p. 7):

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).

This is a straw man. No one has argued that the LNC cannot set fees for seminars, workshops, and meals associated with the convention; pursue ballot access measures; maintain an LP website; or have a national office. The difference is none of these things infringe on the fundamental right to vote, imposing an additional qualification for delegates that is not listed in the bylaws. The LNC has plenary control consistent with the bylaws. From that it does not follow that the LNC has the authority to impose additional qualifications on delegates not listed in the bylaws, thereby de-facto amending the bylaws.

C. Recognizing the National Committee's Plenary Authority Does Not Dangerously Accept That It Has Unlimited Authority (Balch heading)

Balch brief (pp. 7-8):

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

The Judicial Committee is being asked to decide whether the Libertarian National Committee is authorized under the bylaws to impose a mandatory registration fee (or floor fee). I clearly see how the JC could determine that a mandatory registration fee is prohibited by the bylaws. I do not think it is correct to interpret the bylaws as allowing a mandatory registration fee, but for the sake of argument let's say such an interpretation is possible. I do not see any possible interpretation of the bylaws and/or RONR that would allow a mandatory registration fee but confine it to a certain amount. If the LNC has the authority to set a fee, then it has the authority to set any fee. Making the Judicial Committee a biannual arbiter of what is a "reasonable fee" would be a perversion of the JC's duties.

If the LNC is authorized to set a mandatory registration fee, then it is authorized to set a mandatory registration fee of \$100,000. You can bet that if a fee of \$94 is allowed by the JC, next convention it will be \$200. And the convention after that it will be \$500. The Libertarian Party of California started out with a floor fee of \$25. Its business session cost \$220 last year. When package purchase becomes mandatory the convention committee loses all incentive to contain costs.

I'm skeptical the LNC will set a fee of \$10,000, but a particularly unscrupulous future LNC could do so. The Libertarian National Congressional Committee has set a membership fee of \$1,000, which is wildly different from the LP's membership fee of \$25. Different libertarian leaders have vastly different conceptions of how the organization should be structured.

Balch brief (pp. 7-8):

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.

[...]

by preventing the attendance of all but a handful of extremely wealthy delegates, it was intentionally designed to deter most delegates from attending the convention.

At the Orlando LNC meeting during the discussion for the vote on striking down the floor fee, Wayne Root was rumored to have said that he liked the California fee because it encouraged “high quality people” and discouraged “low quality people” from attending (multiple people reported this to me, but I was not at the LNC meeting and was not watching the live stream). I reject the presumption that the \$94 fee wasn’t already designed “to deter [...] delegates from attending the convention.” It was put in place because certain members of the LNC wanted to price people they didn’t like out of the ability to participate in the business session and vote on the future of the Libertarian Party. And I reject the claim that it was reasonable or was based on common costs, as I outlined earlier in this response.

If Balch has conceded that a fee intentionally designed to deter delegates from attending the convention is inconsistent with the bylaws, then by Balch’s own logic you ought to strike down this fee.

It may be argued that the solution to this is the ballot box: vote a LNC that does something stupid like that out of office to deter them from making such a decision. However, this misses the fact that voting them out of office may be impossible when they get to decide who can vote with their fee. There is no political check when the LNC can restrict access to the floor.

D. Setting a Convention Registration Fee Did Not “Amend” the Convention Special Rules of Order (Balch heading)

Balch brief (p. 8):

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.

I agree with Balch that the LNC imposing a mandatory registration fee (or floor fee) would not implicitly amend the Convention Special Rules of Order. However, unlike Balch I believe that the LNC imposing a mandatory registration fee (or floor fee) would implicitly (de-facto) amend the Libertarian Party bylaws.

Conclusion

I am not persuaded by the Convention Oversight Committee brief or by Thomas Balch’s brief. I find them both to be riddled with faulty logic. In contrast I was very pleased when I read petitioners’ brief and am proud I signed my name to it. Brad Ploeger did an immensely thorough job laying out the issues.

Although I am a Professional Registered Parliamentarian and a licensed attorney in CA, PA, and NJ, I don’t consider this document to be either a parliamentary opinion or a legal brief. I did not have time to be that thorough given the deadline of JC deliberations and the deadline for briefs which I already missed. This is simply my stream of consciousness reaction to the briefs as I read them. I hope my opinions will be helpful to you in your deliberations. The JC ought to strike down the floor fee.

-Chuck Moulton