

October 4, 2011

**Confidential Attorney-Client Communication**

*Via electronic mail only (mark@garlic.com)*

Mark Hinkle  
Chair, Libertarian National Committee  
2600 Virginia Avenue N.W., Suite 200  
Washington, DC 20037

***Re: Leadership and Organizational Status of the Libertarian Party of Oregon***

Dear Mr. Hinkle:

The Libertarian Party (herein "LP") requested a legal analysis of the dispute between two factions claiming to be the legitimate Libertarian Party of Oregon (herein "LPO"). These factions are the "Wagner Faction," led by Wes Wagner, and the "Reeves Faction," led by Tim Reeves. The LP also requested an analysis as to whether or not the actions of the LP Judicial Committee regarding this matter were valid.

***STATEMENT OF FACTS***

On March 12, 2011, the LPO convened for their convention. At this time, it is undisputed that the 2009 LPO Bylaws governed, and that the March 12, 2011 meeting was a properly noticed meeting of the LPO. The March 12, 2011, meeting did not achieve a quorum. At this time, then Vice Chair Wes Wagner moved to continue the meeting until May 21, 2011 in the hopes of achieving a quorum. The motion was approved. The convention then adjourned until May 21, 2011. Shortly after the March 12, 2011 meeting, then Chair Jeff Weston resigned and Wes Wagner assumed the position of chair of the LPO.

## **Tyler Smith & Associates, P.C.**

Rural Business Attorneys

---

On March 31, 2011, Wagner held what he contends was a meeting of the LPO state committee. At this meeting, a new slate of officers was elected and an entirely new set of bylaws was adopted. There is no indication that this meeting was a properly noticed convention, as would have been required by the 2009 LPO bylaws for any amendment or change to the 2009 LPO bylaws. The 2009 LPO bylaws required a 2/3 majority vote at a convention to amend or replace the bylaws. While it is possible that 2/3 of the members present at Wagner's meeting voted to replace the bylaws, it is without question that the meeting was not properly noticed and did not function as a convention. The Wagner Faction nonetheless filed the new bylaws and new officers with the Oregon Secretary of State in April. The Oregon Secretary of State currently recognizes him as the last chair of the LPO so they will only take documents from him.

On May 21, 2011, other members of the LPO met for what they believed to be the continuation of their annual convention. No one from the Wagner Faction attended this meeting. Once again, the LPO convention did not achieve quorum. At this time, the LPO members adjourned the convention *sine die*. The state committee members then held a state committee meeting immediately following the convention, as required by the bylaws of the LPO. The post-convention state committee meeting did occur and achieve a quorum and voted to appoint officers to vacant officer positions. Only a state committee meeting can meet for the purpose of filling vacant officer positions, as permitted by the 2009 LPO bylaws. At that May 21 meeting, the LPO appointed the Reeves Faction. As this meeting is required to be held following the convention, it was noticed via the notice for the March 12, 2011 meeting and the continuance of the meeting on that day to May 21. After the fact, but not at the time of the meeting, the Wagner

faction disputed whether the state committee meeting had quorum based solely on credentialing questions, however the individuals whose credentials are disputed seem to be validated by the records of the Wagner Faction.

The Executive Committee of the Libertarian National Committee (herein “LNC”) met this summer and voted to recognize the Reeves Faction as the legitimate leadership of the LP’s Oregon affiliate, the LPO. The Wagner Faction immediately filed an appeal to the LP’s Judicial Committee and argued that the LNC’s decision to recognize the Reeves Faction was a functional disaffiliation. The LP’s Judicial Committee, after a telephone hearing, ruled that the LNC had effectively disaffiliated the LPO by choosing to recognize the leadership of the Reeves Faction. The Judicial Committee ruled that the LNC must recognize whichever state affiliate the Oregon Secretary of State recognizes as the LPO, until and unless that group is disaffiliated. A request for clarification from the Judicial Committee resulted in no change of opinion. As the Oregon Secretary of State viewed the decision “the Judicial Committee punted”. On September 29, 2011 the Oregon Secretary of State chose to recognize the Wagner Faction as the leadership of the LPO. The Secretary’s explanatory memo shows that she relied in large part upon the Judicial Committee finding in making her determination, and their decision and policy was explained as being based on Wagner being the last officer known to them to be left of the old officers.

***AUTHORITIES***

***Oregon Law***

In Oregon, state political parties are a creature of statute. ORS 248.004. Political parties explicitly have the powers of an Oregon non-profit corporation. Oregon non-profits are required to follow their bylaws. Oregon non-profits are also governed by the non-profit provisions of

## **Tyler Smith & Associates, P.C.**

Rural Business Attorneys

---

Oregon law. ORS Chapter 65 (see ORS 65.207(3)(b) for example with explicit reference to applicability to state political parties). One of the powers of a non-profit corporation is that aggrieved members may pursue legal action to have a court declare invalid improper actions taken by the organization's leadership. ORS 65.084(2). It is also a criminal violation of ORS 65.990 to falsely sign a document for filing with the Secretary of State.

### ***LPO Bylaws***

The 2009 LPO Bylaws requires that bylaws can only be changed at a properly noticed convention. The 2009 LPO bylaws specifically require 45 days notice to the membership for a convention, as well as a 2/3 majority vote of the convention to amend or otherwise alter the LPO bylaws.

The Wagner Faction's state committee meeting on March 31, 2011 was not purported to be a convention therefore the bylaws could not have been properly changed under any circumstances at that meeting. Only at a properly noticed convention can the LPO change its bylaws. Article XVI, Section 1 of the Libertarian Party of Oregon Bylaws, 2009. If it was intended to be a convention, the March 31, 2011 meeting was blatantly improperly noticed. The March 12 Convention was not even 45 days prior to the Wagner only meeting. Thus, it is without question that any bylaw changes made at the March 31, 2011 state committee meeting are thus null, void, invalid just as if they had never been made. ORS 65.214 (Notice must be made consistent with corporate bylaws); Roberts Rules (no business can be conducted when a quorum is not present, other than to recess, establish a time to adjourn, or adjourn; and a main motion adopted in conflict with bylaws is null and void). Further, especially given that bylaw

changes could not be made at ANY state committee meeting, the bylaws were not changed that day and no officer vacancies existed for the state committee to fill. LPO 2009 Bylaws, Article XVI. The operative 2009 LPO bylaws only allow the state committee to appoint officers in the case of a vacancy. LPO 2009 Bylaws, Article V. The bylaws provide that officer terms end at the *sine die* of the convention, thus, there would not have been officer vacancies until the end of the May 21, 2011 convention because the meeting was held over, recessed and continued to that date from the March 12 meeting. *Id.* Holding over a meeting until a later time is a perfectly legitimate option when a body does not have a quorum, and no new notice is required as the vote at the prior meeting is notice in itself. The notice of continuance operates from the vote at the regularly noticed meeting, which in this case was the March 12 Convention.

The Wagner Faction felt that their March 31, 2011 vote to replace the bylaws rendered as moot the vote of the March 12, 2011 convention to continue the convention to May 21, 2011. That contention is clearly wrong. Robert's Rules, as the LPO parliamentary authority, 10<sup>th</sup> edition p. 466 states that no action of the board can conflict with the action of the assembly, and the board is obligated to carry out the instructions of the assembly. The March 12 Convention voted to continue the meeting until May 21. Thus the Wagner Faction had no authority to cancel this May 21 continuance of the LPO convention, and their solo actions were in violation of the bylaws and had no effect.

### ***ANALYSIS***

There is no evidence that the March 31, 2011 Wagner Faction meeting was a properly noticed convention, as required to amend the bylaws. As a result, any alterations of the bylaws

attempted to be made at this meeting are invalid. As the March 12, 2011 convention voted to continue the convention until May 21, 2011, Chair Wagner's term of office expired on May 21, 2011, per the LPO's operative 2009 bylaws. LPO 2009 Bylaws, Article V. The post-convention state committee meeting of May 21, 2011, however, did have a quorum, was properly noticed pursuant to being a post-convention meeting, and was presented with vacant officer positions that the state committee was entitled to fill. While the Wagner Faction contends there was not a quorum due to credentialing errors, no challenges were made at the time of the post-convention state committee meeting, as required by the operative 2009 LPO Bylaws, therefore the objection to credentialing was waived and lost at that time. Therefore, the Reeves faction is the proper group of officers of the LPO and the 2009 Bylaws are still in place as they were March 12, 2011, without amendment.

### ***POSSIBLE COURSES OF ACTION***

#### ***1. Court Ordered Recognition of the Reeves Faction***

Oregon law allows aggrieved members of a non-profit corporation to seek a court order declaring *ultra vires* actions of organizational leadership invalid. This is a power of a non-profit corporation's membership and it attaches to LPO membership. LPO membership, officers, and, derivatively, the LPO itself, can go to court and seek an order from a judge declaring that the Wagner Faction's bylaws and election are invalid. This court order could then be presented to the Secretary of State in order to require her to recognize the Reeves Faction. The lawsuit should also ask the judge to order the Wagner Faction surrender LPO assets to the Reeves Faction.

Given that the Secretary of State has chosen to follow the Judicial Committee ruling, at this point, a lawsuit seems a necessary course of action. A judgment from a court enjoining the LPO and any of its current or past officers that acted improperly from operating under the improperly adopted bylaws or recognizing the improperly selected leadership is likely the only way to restore legitimate LPO leadership without risking 2012 ballot access. Such a lawsuit could be initiated by any member of the LPO and would be filed against the LPO and Wes Wagner in his capacity as a former officer of the LPO. While one would prefer not to see LPO members sue the LPO itself, unfortunately, the LPO is a necessary adverse party to the litigation as the court order must enjoin the LPO itself from operating under the invalid Wagner Faction bylaws.

***2. LP Judicial Committee Actions***

The LP Bylaws expressly create and limit the authority of the Judicial Committee. Based upon the facts presented, the Judicial Committee lacked jurisdiction to hear the Wagner faction's complaint. First, it is apparent under the 2009 LPO Bylaws that it was impossible for the Wagner faction to be legitimate leadership of the LPO, and therefore the Wagner Faction lacked standing to initiate the appeal. Second, the judicial committee has jurisdiction over matter of disaffiliation, this is true, but it is tenuous and highly problematic to hold that the LPO was effectively disaffiliated. First, and most troubling, if there was an effective disaffiliation, the LPO's minor party status and ballot access are in jeopardy. Second, the dispute has merely been about who represents the legitimate leadership of the LPO and which LPO bylaws are in force, it was not about disaffiliation in the formal sense. The dispute is not about choosing between two

## **Tyler Smith & Associates, P.C.**

Rural Business Attorneys

---

organizations, but rather, who represents the legitimate leadership of one organization. A decision by the LNC to recognize the officers properly selected under the LPO's 2009 Bylaws is not a disaffiliation of the entity that is the LPO.

Most importantly, the LP's Judiciary Committee acted outside the scope of its authority. LP Bylaws do not give any authority to the Judicial Committee to determine matters of state party leadership. None of the other areas of jurisdiction apply, therefore, any involvement by the Judicial Committee is also invalid, the ruling is simply moot or superfluous since it violated the bylaws. Any actions taken by the Judicial Committee that conflict with bylaws are invalid, and, could subject the LNC to legal action if an LP member chooses to go to court to have the LP bylaws enforced by having a judge declare the actions of the LP Judicial Committee invalid.

If the Libertarian Party National Committee were to follow the ruling of the Judicial Committee, not only could it be subject to a lawsuit from one of its members for failing to follow the bylaws, but the minor party and ballot access status of the LPO would be immediately jeopardized. The Oregon Secretary of State has made it very clear that disaffiliation would require any subsequent Libertarian affiliate in Oregon to re-qualify for minor party status and ballot access. More tragically, all 13,000+ Oregon Libertarians would become non-affiliated. To fully protect the ballot access and registration pool of the LPO, as well as shield the LNC from legal challenge, it absolutely is essential that the LNC declare the actions of the judicial committee in this matter null and void. If the LNC does declare the LP Judicial Committee actions invalid and expressly chooses not to follow the decision of the LP Judicial Committee,



## **Tyler Smith & Associates, P.C.**

Rural Business Attorneys

---

any lawsuit brought by a member to enforce LNC bylaws would likely be moot, as the LNC would have already done precisely what the litigious member would be asking of a judge.

### *CONCLUSION*

It is clear that the 2009 LPO Bylaws still govern the organization, and that the only properly noticed, bylaw compliant appointment of officers took place at the May 21, 2011 post-convention meeting of the state committee. The Reeves Faction is therefore the legitimate leadership of the LPO. Unfortunately, the only way to restore legitimate LPO leadership in Oregon with any hope of preserving ballot access is to file a lawsuit and obtain a court order declaring the Wagner Faction bylaws and officer elections invalid.

The LNC must disavow the “effective disaffiliation” ruling of the LP Judicial Committee, it simply was not an authorized decision of the Judicial Committee, and must be expressly invalidated to ensure there is no question as to the LPO’s minor party status and ballot access in Oregon.

Thank you for allowing us to assist you with this difficult matter. Please contact our office with any questions regarding this letter.

Best Regard,

*Tyler Smith*

Tyler Smith & Associates P.C.  
[503-266-5590](tel:503-266-5590) (w) | [503-266-5594](tel:503-266-5594) (f)  
[Tyler@ruralbusinessattorneys.com](mailto:Tyler@ruralbusinessattorneys.com)