

**Ruling of the Judicial Committee of the Libertarian Party of California in the Matter of an Appeal to
Certain Elections at May 2021 LPC Convention
Issued June 18, 2021**

Summary

On May 20, 2021, the Judicial Committee (JC) for the Libertarian Party of California (LPC) received an appeal from 14 members asking for a ruling regarding the results of the May 16 state convention election results for LPC Secretary and LPC At-Large Executive Committee members. The JC received further clarifications on May 21, and a supplemental complaint on May 29 expanding the challenge to also include the Northern Area Coordinator and any other election which was decided within a margin of 5 or fewer votes, which includes the At-Large Alternate Executive Committee election.

The totality of the complaint and later clarifications/supplements is that several persons cast votes that were counted in these elections results despite being ineligible to cast those votes, and those votes were enough to impact the outcome of various elections.

The ruling of the Judicial Committee is that:

- 1) The results of the Secretary race must be declared invalid, and that position is vacant.
- 2) The results of the Northern Area Coordinator must be declared invalid, and that position is vacant.
- 3) The At-Large elections of Morrow, Strawn, and Stump stand, and the elections of Malagon, Nichols, and Hewitt must be invalidated and those three seats are vacant.
- 4) The results of the At-Large Alternate election stand.

Jurisdiction

LPC Bylaws Article 14 Section 2 gives the JC broad jurisdiction:

“The Judicial Committee shall be the final body of appeal in all Party matters, subject to the provision that a decision of the Committee may be overturned by a three-quarters vote of a convention.”

Though the LPC bylaws have no other particular rules about contesting convention election results, note that the LPC bylaws establish that our parliamentary authority is *Robert’s Rules of Order Newly Revised*, 12th ed. (RONR), and it provides:

46:48 discusses election contest options which are available to the voting body at the time of the election such as re-counting the vote, re-voting, etc.

46:49-50 provides this rule (underline added), “Otherwise, an election may be contested only by raising a point of order. The general rule is that such a point of order must be timely, as described in 23:5. If an election is disputed on the ground that a quorum was not present, the provisions in the last sentence of 40:12 apply. Other exceptions to the general timeliness requirement are those that come within the five categories listed in 23:6, in which cases a point of order can be made at any time during the continuance in office of the individual declared elected. For example:

- a)...
- b)...

c) If the votes of nonmembers or absentees in the election affect the result, action has been taken in violation of the fundamental principle of parliamentary law that the right to vote is limited to the members of an organization who are actually present at the time the vote is taken.

d)...

e)...

Because the voting body itself is the ultimate judge of election disputes, only that body has the authority to resolve them in the absence of a bylaw or special rule of order that specifically grants another body that authority. ..."

Bylaw 14.2 quoted above is exactly the type of bylaw contemplated by RONR 46:50 that gives another body the authority to judge election disputes after-the-fact.

Thus the LPC Judicial Committee has jurisdiction to take up what is effectively a point of order related to contesting the election results.

Bylaw 14.3 establishes that, "The Judicial Committee review of a Party action or inaction shall be limited to the consistency of that action or inaction in accordance with the governing documents of the Party, including these Bylaws and documents to which they refer, with the only exceptions being Judicial Committee duties mandated by these Bylaws, and arbitration of Party contracts that explicitly call for arbitration by the Judicial Committee."

Awkward but Necessary

The existence of a Judicial Committee with such broad powers is somewhat dangerous, in that a small group of people on a Judicial Committee might at times choose to abuse the position and substitute their own preferences for the preferences of a larger body, such as convention delegates. If they were to do so, there would be nothing to be done about it. This is why it is critical that the Judicial Committee restrain itself to only applying the rules adopted for the organization by the delegates.

Surely some who dislike the real-world impact of this awkward-but-necessary ruling will argue that we are overturning the will of the delegates. We disagree. The will of the delegates can only be determined when that will is expressed by those eligible to be delegates and to cast votes. The heart of this case is merely a determination of who were the properly credentialed delegates eligible to cast votes and thus be part of determining the will of the delegates. The rules adopted by delegates are also an expression of the will of the delegates, and the delegates have expressed a will for the JC to serve in this role. So long as the JC correctly applies the rules and does not act based on anything else, we are upholding the will of the delegates.

We are keenly aware of the awkwardness of this situation, yet our job is to apply the rules. At times in this ruling it is necessary to identify persons by name so as to connect the evidence. We wish to express that we have no intent to criticize these individuals in our recitation of evidence. We have no reason to think the persons involved willfully or maliciously intended to violate the rules. Rather, we suspect they may not have known it was a rules violation. Nonetheless, being unaware of the rules doesn't change the rules. And the reality is that in theory, a future hypothetical person could intentionally credential

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ineligible voters with the intent to impact the elections, so the Judicial Committee acting in this case should serve as a disincentive to anyone in the future who might be so inclined.

Remedy for Inclusion of Improper Votes

RONR 23:8 prescribes a remedy for any sustained points of order regarding inclusion of improper votes (bold is in the original):

“Remedy for Inclusion of Improper Votes. If the announced result of a vote included votes cast in violation of a fundamental principle of parliamentary law, such as votes cast by nonmembers or by absent members, or multiple votes improperly cast by a single member, a point of order can be raised so long as the decision arrived at as a result of the vote has continuing force and effect. If there is any possibility that the vote(s) would have affected the outcome, the results of the vote must be declared invalid if the point of order is sustained.”

The only elections discussed in this ruling are the ones in which the results were close enough to have been potentially impacted by the demonstrated-to-be-improper votes.

Specific Allegations

The received complaint makes the following specific allegations:

- 1) Robert Haglund was registered to vote with the Democratic Party at the time of the convention.
- 2) Victoria Lapacek, joined the Libertarian Party of California for the first time on February 17, 2021, which was less than 90 days prior to the start of the Libertarian Party of California 2021 Convention, on May 15, 2021.
- 3) Michael Lema joined the Libertarian Party of California for the first time on February 17, 2021, which was less than 90 days prior to the start of the Libertarian Party of California 2021 Convention, on May 15, 2021.
- 4) Chris Ganiere voted in the Northern Area Coordinator election despite being a delegate from the Southern Area.
- 5) Brian Milholland, Jarrett Tilford, Emily Tilford, and Janine (de Rose) Kent continued voting after they departed convention.

Another allegation had originally been made that another person had not been a party member for 90 days, but that issue was withdrawn when it was realized that the person’s join date in the spreadsheet used for credentialing was a typo and did not match the party records.

Robert Haglund

The evidence provided to the Judicial Committee regarding Mr. Haglund’s eligibility to be credentialed as a delegate includes:

- The LPC submitted testimony that the membership records show Mr. Haglund requested to become a member and signed the pledge on January 11, 2021.

- The LPC submitted a copy of the spreadsheet provided to Credentials Committee for credentialing, and it shows that during the pre-convention eligibility check, he was registered as a Democrat thus was not a member and was not eligible to register as a delegate.
- Respondent Angela McArdle provided a copy of email confirmation showing Mr. Haglund made some change to his voter registration on the morning of May 15, the first day of the convention, though it does not demonstrate what data was changed.
- Testimony indicates that he re-registered as Libertarian while at the convention and such a note was added to the credentialing spreadsheet.
- The LPC provided two screenshots and associated testimony that, “On May 18, 2021 his registration was checked on lavote.net and it still showed he was a registered Democrat, but when checked again on May 27, 2021 it showed he was registered as a Libertarian”

Collectively the evidence demonstrates a change in party registration was effected between May 18 and May 27. This is consistent with the testimony that he requested a change in his party registration on May 15, with the change effected by the Secretary of State between May 18 and May 27.

As of the date of the convention, the relevant bylaws about becoming a party member and being a convention delegate were (underline added):

Bylaw 5, Section 1:

Individuals may become members of the State Central Committee by:

- A. Becoming a holder of California public office that is subject to election other than County Central Committee, or
- B. Making application and paying such dues as prescribed by the Executive Committee. The Executive Committee may authorize participation in a joint membership arrangement with the national Libertarian Party for the purpose of satisfying the dues requirement.

No State or County Central Committee member shall be a registrant of or hold office in any political party other than the Libertarian Party.

All Party officeholders are required to be members of the State Central Committee.

Bylaw 19, Section 3:

Delegates to the convention shall be current State Central Committee members, and shall either hold public office or shall have been State Central Committee members for any ninety days prior to the convention. Notwithstanding the above, each Executive Committee member may seat one current State Central Committee member as a delegate.

CONCLUSION: The above evidence is sufficient to demonstrate that Mr. Haglund had not prior to the convention completely complied with the requirements to be a State Central Committee member as required by Bylaw 5.1, in that he was a registrant of another party (Democrat). Regardless of whether he became a Libertarian Party registrant and thus a party member at the instant he submitted to the Secretary of State a request to change his registration, or whether that happened when the Secretary of State actually effected the change, it is irrelevant here. He was not eligible to become a State Central

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Committee member until he ceased being a registrant of the Democrat Party, thus had not been a party member for 90 days prior to the convention as required by Bylaw 19.3 in order to be credentialed as a convention delegate on May 15. The credentialing spreadsheet indicated which delegates were sponsored by Executive Committee members per the exception in Bylaw 19.3, but Mr. Haglund was not so sponsored. Thus, it was a bylaw violation to credential him as a delegate, and any votes he cast were improper. The nature of this bylaw violation is such that RONR 46:49-50 creates a timeliness exception to allow the issue to be raised after the fact, and RONR 23:8 prescribes a remedy.

Evidence provided regarding improper votes cast by Mr. Haglund include:

- Mr. Haglund signed the Saturday and Sunday delegate sign-in sheets.
- Screenshots and a spreadsheet from the Porcupine voting application show that Mr. Haglund did cast votes in the elections for Secretary, At-Large Round 1, At-Large Round 2, At-Large Round 3, and At-Large Alternate.

Victoria Lapacek

The evidence provided to the Judicial Committee regarding Ms. Lapacek's eligibility to be credentialed as a delegate includes:

- The LPC response provided testimony that she first signed the pledge and became a member of LPC on 2/17/21. This matches the screenshot submitted by appellants with the same date.
- The delegate eligibility spreadsheet provided to the Credentials Committee indicates she was not eligible to be a delegate.

Again, Bylaw 19, Section 3 requires that (underline added):

Delegates to the convention shall be current State Central Committee members, and shall either hold public office or shall have been State Central Committee members for any ninety days prior to the convention. Notwithstanding the above, each Executive Committee member may seat one current State Central Committee member as a delegate.

CONCLUSION: Ms. Lapacek first became a State Central Committee member 87 days prior to the convention, thus did not meet the 90-day-prior delegate eligibility requirement. According to the credentialing spreadsheet, she had not been sponsored by an Executive Committee member to meet the exception. Thus, it was a bylaw violation to credential her as a delegate, and any votes she cast were improper. The nature of this bylaw violation is such that RONR 46:49-50 creates a timeliness exception to allow the issue to be raised after the fact, and RONR 23:8 prescribes a remedy.

Evidence provided regarding improper votes cast by Ms. Lapacek includes:

- Ms. Lapacek signed the Saturday and Sunday delegate sign-in sheets.
- Screenshots and a spreadsheet from the Porcupine voting application show that Ms. Lapacek did cast votes in the elections for Secretary, At-Large Round 1, At-Large Round 2, At-Large Round 3, and Northern Area Coordinator

Michael Lema

The evidence provided to the Judicial Committee regarding Mr. Lema's eligibility to be credentialed as a delegate includes:

- The LPC response provided testimony that he first signed the pledge and became a member of LPC on 2/17/21. This matches the screenshot submitted by appellants with the same date.
- The delegate eligibility spreadsheet provided to the Credentials Committee indicates he was not eligible to be a delegate.

Again, Bylaw 19, Section 3 requires that (underline added):

Delegates to the convention shall be current State Central Committee members, and shall either hold public office or shall have been State Central Committee members for any ninety days prior to the convention. Notwithstanding the above, each Executive Committee member may seat one current State Central Committee member as a delegate.

CONCLUSION: Mr. Lema became a State Central Committee member 87 days prior to the convention, thus did not meet the 90-day-prior delegate eligibility requirement. According to the credentialing spreadsheet, he had not been sponsored by an Executive Committee member to meet the exception. Thus, it was a bylaw violation to credential him as a delegate, and any votes he cast were improper. The nature of this bylaw violation is such that RONR 46:49-50 creates a timeliness exception to allow the issue to be raised after the fact, and RONR 23:8 prescribes a remedy.

Evidence provided regarding improper votes cast by Mr. Lema includes:

- Mr. Lema signed the Saturday and Sunday delegate sign-in sheets
- Screenshots and a spreadsheet from the Porcupine voting application show that Mr. Lema did cast votes in the elections for Secretary, At-Large Round 1, At-Large Round 3, At-Large Alternate, and Northern Area Coordinator

Chris Ganiere

Nothing is alleged regarding Mr. Ganiere's eligibility to be a delegate. The only challenged issue regarding Mr. Ganiere is that he was ineligible to cast a vote in the election of Northern Area Coordinator.

The evidence provided to the Judicial Committee regarding Mr. Ganiere's eligibility to vote in the Northern Area Coordinator election includes:

- The credentialing spreadsheet lists him as being affiliated with Orange County and his area being "South"
- Mr. Ganiere did sign the Sunday delegate sign-in sheet (elections were held on Sunday) listing his own region as being "South"

Bylaw 12.1.B provides in relevant part (underline added):

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“Each Area Coordinator shall be responsible for coordinating activities in their respective area of the state and shall be elected by the delegates from that area for two-year terms.”

CONCLUSION: Mr. Ganiere was not eligible to vote for Northern Area Coordinator. Thus, it was a bylaw violation to count a vote from him in that election. The nature of this bylaw violation is such that RONR 46:49-50 creates a timeliness exception to allow the issue to be raised after the fact, and RONR 23:8 prescribes a remedy.

Evidence provided regarding improper votes cast by Mr. Lema includes:

- Screenshots and a spreadsheet from the Porcupine voting application show that Mr. Ganiere did cast a vote in the election for Northern Area Coordinator

Jarrett Tilford, Emily Tilford, Janine (de Rose) Kent

Nothing is alleged regarding the eligibility of these three individuals to be delegates. The only challenged issue is that they departed the convention at the lunch break on Sunday, thus votes from them should not have been counted after that point.

The evidence provided to the Judicial Committee regarding their eligibility to vote in the post-lunch elections includes:

- Personal, first-hand testimony from Brent Olsen who submitted to the JC that, “I know first hand (because I said goodbye to them when they left) that Emily Tilford, Janine Kent, and Jarrett Tilford left when we broke for lunch on Sunday, May 16, 2021.”
- The LPC submitted evidence regarding the times documented in the Porcupine voting app for the elections at issue here as all having been after the lunch break:
 - Secretary 14:00:35 PDT
 - Northern Area Coordinator 14:30:54 PDT
 - At Large (Round 1) 16:07:16 PDT
 - At Large (Round 2) 16:44:48 PDT
 - At Large (Round 3) 17:07:58 PDT
 - At Large Alternate 17:27:45 PDT

This evidence being uncontroverted, we find the first-hand testimony from an eyewitness to be sufficient specific evidence of the absence of these three individuals for the afternoon elections.

CONCLUSION: Mr. Tilford, Ms. Tilford, and Ms. Kent were not eligible to vote while they were absentees during the afternoon elections. Thus, it was a bylaw violation to count their votes in those elections. The nature of this bylaw violation is such that RONR 46:49-50 creates a timeliness exception to allow the issue to be raised after the fact, and RONR 23:8 prescribes a remedy.

Evidence provided regarding improper votes cast by these three persons includes:

- All three signed the Saturday and Sunday delegate sign-in sheets

- Screenshots and a spreadsheet from the Porcupine voting application show the following votes cast in the elections in question:
 - Secretary: Emily Tilford, Jarrett Tilford
 - Northern Area Coordinator: Emily Tilford, Jarrett Tilford, Janine DeRose (Kent)
 - At-Large Round 1: (none)
 - At-Large Round 2: (none)
 - At-Large Round 3: (none)
 - At-Large Alternate: (none)
- No paper ballots were cast by any of these individuals in these races, which would have demonstrated their physical presence.

Brian Milholland

Nothing is alleged regarding Mr. Milholland's eligibility to be a delegate. The only challenged issue regarding Mr. Milholland is that he was ineligible to cast a vote in any elections while he was absent.

The evidence provided to the Judicial Committee regarding Mr. Milholland's eligibility to vote in the elections at issue:

- Testimony from Brent Olsen that, "Also, Brian Milholland was one of the individuals that I had called out for voting in the Northern Area Coordinator election when they were from the Southern Area. Afterwards, Matthew Butts approached me and informed me that Mr. Milholland didn't know that he could not vote in that election because he had left the convention during the morning of Sunday, May 16, 2021, to return home. At this point I informed Mr. Butts that Mr. Milholland should not be voting at all if he left the convention, as you must be present at the convention to vote. Mr. Butts stated that he notified Mr. Milholland of this after I informed him of this."

Though this evidence is uncontroverted, and though we have no particular reason to not believe Mr. Olsen's relay of what he was told, we are not comfortable making firm conclusions based on second-hand testimony with a less-specific evidence indicator of what time Mr. Milholland is believed to have departed. Therefore we are not including his afternoon votes in the lists of those demonstrated by evidence to be improper.

Summary of Improper Votes

The table below summarizes the votes we found above to have been improperly cast in the elections at issue.

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Voter Name	Secretary	Northern Area Coordinator	At-Large R1	At-Large R2	At-Large R3	At-Large Alternate
Robert Haglund	X		X	X	X	X
Victoria Lapacek	X	X	X	X	X	
Michael Lema	X	X	X		X	X
Chris Ganiere		X				
Emily Tilford	X	X				
Jarrett Tilford	X	X				
Janine (de Rose) Kent		X				
Count:	5	6	3	2	3	2

Impact on Elections

RONR 23:8 quoted above prescribes the remedy for improper votes to be, “If there is any possibility that the vote(s) would have affected the outcome, the results of the vote must be declared invalid if the point of order is sustained.”

Having found the points of order raised here to be well taken, the next step is to compare the count of improper votes in each of the contested elections to the election results.

Secretary

The final election results for Secretary (combining Porcupine app votes and paper votes), as provided by the LPC were as follows:

Jessica Tewksbury - 57
Jillian Olsen - 53
NOTA - 1

A total of 111 ballots were cast, so that 56 was a majority necessary for election. Ms. Tewksbury was declared elected. However, with 5 improper votes having been cast, they span the margin of victory between the two candidates, and Ms. Tewksbury was within 1 vote of the majority threshold. Thus there is a possibility that the improper votes affected the outcome, and the results of the Secretary race must be declared invalid.

Northern Area Coordinator

The final election results for Northern Area Coordinator (combining Porcupine app votes and paper votes), as provided by the LPC were as follows:

Jia Christopher - 19
Kevin Moore - 14
NOTA – 0

A total of 33 ballots were cast, so that 17 was a majority necessary for election. Ms. Christopher was declared elected. However, with 6 improper votes having been cast, they span the margin of victory between the two candidates, and Ms. Christopher was within 2 votes of the majority threshold. Thus there is a possibility that the improper votes affected the outcome, and the results of the Northern Area Coordinator must be declared invalid.

At-Large

The final election results for At-Large Round 1 (combining Porcupine app votes and paper votes), as provided by the LPC were as follows:

Kalish Morrow - 79
Cheyne Strawn - 71
Elizabeth Stump - 63
Adrian Malagon - 52
Rajani Miatico - 49
Tom Nichols - 48
Wendy Hewitt - 44
Zach Foster - 44
Pete Moulds - 43
Kevin Moore - 40
Michael Noguera - 33

A total of 101 ballots were cast, so that 51 was a majority necessary for election. Morrow, Strawn, Stump, and Malagon were declared elected, and Noguera was dropped from the next round of balloting. However with 3 improper votes having been cast in round 1, they span the margin between Mr. Malagon and Ms. Miatico, and Mr. Malagon was within 1 vote of the majority threshold. If three fewer ballots had been cast, there would have been only 98 ballots, and 50 votes would have been a majority necessary for election. Three fewer votes for Mr. Malagon would have left him shy of a majority.

Thus there is a possibility that the improper votes affected the outcome. The votes received by Morrow, Strawn, and Stump were more than 3 above majority, and they were more than 3 above Mr. Malagon. As a result, the elections of Morrow, Strawn, and Stump stand, and only the Round 1 election of Mr. Malagon must be invalidated.

In round 2, no candidate received a majority, and three more candidates were dropped from the ballot. In round 3, Tom Nichols and Wendy Hewitt were declared elected. The Judicial Committee should not and will not speculate as to how the delegates would have voted differently in rounds 2 and 3 of the voting had the result of round 1 been different and Mr. Malagon had been on the round 2 and 3 ballots. However rounds 2 and 3 were necessarily impacted in incurable ways by the errors in round 1, thus the election of Tom Nichols and Wendy Hewitt must be invalidated.

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At-Large Alternate

The final election results for At-Large (combining Porcupine app votes and paper votes), as provided by the LPC were as follows:

Michael Lema 55
Matthew Butts 48
Rajani Miatico 43
NOTA 1

A total of 84 ballots were cast, so that 43 was a majority necessary for election. Lema and Butts were declared elected. With 2 improper votes having been cast, they do not span the margin of victory between the candidates elected and the next-place finisher, and neither of those declared elected was within 2 votes of the majority threshold. Thus there is no possibility that the improper votes affected the outcome, and the results of the At-Large Alternate election stand.

Judicial Committee members concurring in this ruling:

Alicia Percell
Chuck Hamm
Kevin Shaw
David Bowers, Chair LPC Judicial Committee

Judicial Committee member unavailable for ruling:
Bob Weber