

**BEFORE THE JUDICIAL COMMITTEE
OF THE LIBERTARIAN PARTY**

RESPONSE OF THE LIBERTARIAN NATIONAL COMMITTEE TO PETITION FOR
APPEAL FILED BY APPELLANTS ANDREW CORDIO, ET AL.

Pursuant to Judicial Committee Rule of Procedure 4, the Libertarian National Committee (“LNC”) respectfully submits this Response to the Petition for Appeal that Andrew Cordio and several Libertarian Party members (“Appellants”) filed on May 10, 2022.

Introduction and Factual Background

This is the second appeal that Appellants have filed in this matter. They filed their first appeal on April 4, 2022.¹ In that appeal, Appellants requested review of a March 24, 2022 ruling of the LNC Chair, as upheld by the LNC, that a Resolution to Recognize the Rightful State Committee of the Libertarian Association of Massachusetts (“LAMA”) (the “Resolution”) moved by LNC members Rich Bowen and Pat Ford on March 23, 2022 was out of order. Petition I at 7.

Appellants asserted that the Judicial Committee had jurisdiction over their first appeal pursuant to LP Bylaw 8.2(a), which governs matters involving “suspension of affiliate parties” under LP Bylaw 5.6, and pursuant to LP Bylaw 8.2(d), which governs matters involving “voiding of National Committee decisions” under LP Bylaw 7.12 (providing that the Judicial Committee “shall” consider whether the decision “contravenes specified sections of the bylaws.”). According to Appellants, the Judicial Committee could properly exercise jurisdiction under LP Bylaw 8.2(a) because “there is a constructive disaffiliation of the Massachusetts affiliate....” Petition I at 7.

Despite invoking jurisdiction under LP Bylaw 8.2(a) and asserting that the Massachusetts affiliate had been constructively disaffiliated, Petition I at 1,7, Appellants did not request that the Judicial Committee decide that issue. Instead, they expressly concurred with the LNC that the only issue to be decided was “the propriety of [the] sustainment of the LNC Chair’s ruling” that the Resolution was out of order. Petition II at 3. Nevertheless, Appellants argued at length, both in the hearing before the Judicial Committee and in their written submissions, that the Massachusetts affiliate had in fact been “constructively disaffiliated,” and that Appellants are LAMA’s only true representatives. Appellants and their supporters also submitted a large number of filings after the hearing that attempted to convince the Judicial Committee of this conclusion.

On May 6, 2022, the Judicial Committee ruled against Appellants in their first appeal. Specifically, the motion before the Judicial Committee to veto the Chair’s ruling failed.²

¹ Hereinafter, Appellants’ April 4, 2022 Emergency Petition for Appeal is referenced as “Petition I” and their May 10, 2022 Petition for Appeal is referenced as “Petition II”.

² The motion failed by a 3-3 vote with one abstention. In his accompanying opinion, Judicial Committee member Tom Arnold indicated that he had voted in favor of the motion because he believed that LNC Chair Whitney Bilyeu

Appellants filed the instant appeal on May 10, 2022. In this second appeal Appellants again invoke jurisdiction under LP Bylaw 8.2(a) and again assert “the constructive disaffiliation of the Massachusetts affiliate” as the basis for the Judicial Committee’s jurisdiction under that bylaw. Petition II at 1. Appellants further assert that they do “not wish to reinvent the wheel” with respect to the facts giving rise to their second appeal, and so they rely on an “updated” version of the “timeline of pertinent events” that they submitted in their first appeal. Petition II at 1. Appellants depart from their first appeal, however, in that they now ask the Judicial Committee to decide that issue and grant the relief that they declined to pursue in the first appeal. Specifically, Appellants now ask the Judicial Committee to “recognize the State Committee presently led by Andrew Cordio thus rendering null and void the constructive disaffiliation of the Massachusetts affiliate by the LNC....” Petition II at 1.

The facts relating to the underlying dispute involving LAMA are summarized in the Response that the LNC submitted to Appellants’ first appeal on April 22, 2022. The LNC hereby incorporates herein and relies upon that Response, as well as the Supplemental Response that the LNC submitted in Appellants’ first appeal on May 2, 2022.

I. The Judicial Committee Should Not Permit Appellants to Relitigate Issues That They Raised in Their First Appeal.

At some point, litigation must come to an end.

Appellants have now filed a second appeal that asserts the very same issue that they expressly raised and argued extensively in their first appeal – namely, the “constructive disaffiliation of the Massachusetts affiliate....” Petition II at 1. Having failed to obtain the relief they requested in their first appeal, however, Appellants seek to relitigate that issue and request alternative relief that they declined to pursue in their first appeal. The Judicial Committee should not permit Appellants to pursue this repetitive litigation tactic here.

The doctrine of *res judicata* – meaning a thing adjudicated – is well-settled in both state and federal courts. See *Allen v. McCurry*, 449 U.S. 90, 94 (1980). Under that doctrine, “a final judgment on the merits of an action precludes the parties or their privies from relitigating issues that were or *could have been raised* in that action.” *Id.* (citation omitted) (emphasis added). The Supreme Court has repeatedly recognized the important purposes that underly this doctrine: it “relieve[s] parties of the cost and vexation of multiple lawsuits, conserve[s] judicial resources, and, by preventing inconsistent decisions, encourage[s] reliance on adjudication.” *Id.* (citation omitted). Thus, when a party has had a “full and fair opportunity” to litigate an issue, the party may not relitigate it in a subsequent action in an effort to obtain a different result. *Id.*

The Judicial Committee is not a court, of course, but the same principles that justify courts in barring parties from pursuing repetitive litigation apply here with even greater force. In

had made certain comments that “led me to believe that her ruling was not made in good faith with the bylaws.” Mr. Arnold subsequently acknowledged that he was mistaken – Ms. Bilyeu did not make the comments he had attributed to her – and he retracted his written opinion. Appellants’ assertion in reliance on Mr. Arnold’s opinion that the Chair’s ruling was motivated by “a lack of good faith” is therefore groundless and should be rejected. Petition II at 10.

their first appeal, Appellants had a full and fair opportunity to litigate the issue of whether the Massachusetts affiliate had been “constructively disaffiliated”. That was not an issue that merely “could have been raised” in Appellants’ first appeal, *Allen*, 449 U.S. at 94, but rather, Appellants expressly raised it and argued that it was one of two grounds on which the Judicial Committee could exercise jurisdiction. Petition I at 1,7. Furthermore, as Appellants concede, the facts giving rise to their second appeal are the same facts that gave rise to their first appeal. Petition II at 1. The only reason that Appellants have filed their second appeal is that they did not win their first, and so they want a second bite at the apple. They seek to relitigate the very same issue that they raised in their first appeal, based on the same facts, only now they ask the Judicial Committee not to veto the Chair’s ruling but to “recognize the State Committee presently led by Andrew Cordio....” Petition II at 1. Appellants could have and should have requested that relief in their first appeal. They should not be permitted to do so here.

Appellants’ Petition in this second appeal is 23 pages, single-spaced, and asserts the same arguments that Appellants asserted in their first appeal, albeit at greater length. Under the Judicial Committee’s rules, the LNC and other interested parties are afforded just seven days to prepare and submit a response. J.C. R. of App. P. 4. The Judicial Committee, meanwhile, like the LNC is a volunteer body with limited resources. Its members heard Appellants’ first appeal, held a two-hour hearing, and prepared thoughtful and considered opinions in support of their respective decisions. Appellants fail to assert any justification for asking the Judicial Committee to repeat this process all over again.

To be sure, the dispute involving LAMA raises important issues that impact not only LAMA itself, but also the party members involved and the LNC. The LNC maintains its position that the dispute should be resolved by the state affiliate, without the top-down interference of the national party. It should not be resolved by allowing Appellants to file successive appeals until they get the result they seek.

II. The Judicial Committee Should Deny Appellants’ Second Appeal Because It Is Untimely.

The Judicial Committee should also decline to hear Appellants’ second appeal because it is untimely. LP Bylaw 5.6 expressly provides that a disaffiliated affiliate may challenge its disaffiliation by appeal to the Judicial Committee “within 30 days of receipt of notice of such revocation.” Although the LNC rejects Appellants’ assertion that the LNC’s decision not to intervene in the LAMA dispute constitutes “constructive disaffiliation” of a state affiliate, as well as Appellants’ assertion that “constructive disaffiliation” is a proper basis for the Judicial Committee to exercise jurisdiction, Appellants’ appeal is plainly untimely under their own theory.

According to Appellants, “[t]he concept of notice is inapplicable in constructive disaffiliation.” Petition II at 6. In support, Appellants quote Ms. Mattson’s opinion in the Delaware appeal, which poses the following question: “At what point does failure to resolve a disputed-officer problem eventually become constructive disaffiliation?” Petition II at 6. Whatever ambiguities might arise in other matters, however, that question is easily answered here. Taking Appellants at their own word, the “constructive disaffiliation of the Massachusetts

affiliate” occurred at some date prior to April 3, 2022, as they asserted in their first Appeal. Petition I at 7.

Appellants’ Petition in this second appeal, unlike their first, is undated. The LNC therefore assumes that Appellants filed it on May 10, 2022, when the Judicial Committee notified the LNC of its filing. Even if the second appeal was filed a day or several days before that date, however, it would still be untimely. By their explicit admission, Appellants had actual notice of the “constructive disaffiliation” of the Massachusetts state affiliate no later than April 3, 2022, when they filed their first appeal. Petition I at 1. Under LP Bylaw 5.6, therefore, the deadline for filing any appeal from that “constructive disaffiliation” could not be later than May 3, 2022. Moreover, Appellants were presumably on notice of the “constructive disaffiliation” asserted in their first Petition before the day on which it was filed, which would make the 30-day window under LP Bylaw 5.6 close sometime prior to May 3, 2022.

Recognizing that their second appeal was filed after the 30-day period specified by LP Bylaw 5.6, Appellants insist that they could not have been on notice of the “constructive disaffiliation” of the Massachusetts affiliate before April 23, 2022. Petition II at 7. But here Appellants directly contradict themselves. They cannot assert, for purposes of their first appeal, that the “constructive disaffiliation” occurred at some date prior to April 3, 2022, but then assert, for purposes of their second appeal, that they were not on notice of that “constructive disaffiliation” until April 23, 2022. They could not have asserted that it occurred prior to April 3, 2022 unless they had notice on that date.

Appellants finally assert that “equitable tolling” should apply here to extend the deadline for filing their second appeal beyond the 30-day window prescribed by LP Bylaw 5.6, but that assertion has no merit. Equitable tolling does not apply where a party has actual notice of the facts giving rise to a purported cause of action. Here, Appellants’ own filings unequivocally establish that they had such notice as early as April 3, 2022. Petition I at 1. This appeal should be rejected as untimely.³

III. The Judicial Committee Should Deny Appellants’ Second Appeal for Lack of Jurisdiction.

The LNC maintains, as it did in Appellants’ first appeal, that the Judicial Committee lacks jurisdiction over this appeal under LP Bylaw 8.2(a), because that bylaw does not confer jurisdiction over matters involving the “constructive disaffiliation” of a state affiliate, and because the LP Bylaws never mention that undefined term. For the reasons stated in the LNC’s Response and Supplemental Response to Appellants’ first appeal, which are incorporated herein by reference, the Judicial Committee should decline Appellants’ invitation to extend its jurisdiction beyond the limited bases expressly enumerated under LP Bylaw 8.2.

The LNC will add just one point to its prior discussion of this issue. Appellants assert that multiple LP Bylaw provisions would be rendered “absurd” unless the Judicial Committee

³ Appellants make a number of allegations regarding the LNC’s purported lack of “good faith” and alleged “defamation” committed by certain LNC members. Petition II at 8-9. The LNC has already refuted these allegations to the extent that they are relevant and declines to address them further. *See supra* at n.2.

construes LP Bylaw 8.2(a) to grant it jurisdiction over matters involving “constructive disaffiliations” of a state affiliate, Petition II at 20-21, but that simply is not so. The bylaws in question, which are enumerated in Appendix A to Ms. Mattson’s opinion in the recent Delaware appeal, unsurprisingly contemplate that the LNC will recognize entities with which it duly affiliates pursuant to LP Bylaw 5.2 and act accordingly. But these bylaws do not transform into an absurdity whenever there is a dispute as to the genuine leadership of such an affiliate. The LNC may be temporarily unable to comply with them until the dispute is resolved, but they still mean what they say and they still fit logically within the framework of the LP Bylaws.

Appellants’ construction of the LP Bylaws, by contrast, cannot be reconciled with the plain terms of LP Bylaw 8.2. Under LP Bylaw 8.2, “[t]he subject matter jurisdiction of the Judicial Committee *is limited to consideration of only those matters expressly identified as follows....*” (emphasis added). Appellants do not deny that “constructive disaffiliation” is not one of the matters expressly identified in LP Bylaw 8.2. Appellants do not even contend that the LP Bylaws anywhere recognize, much less define, that concept. Instead, their position is that “constructive disaffiliation” must be implied as a term included under LP Bylaw 8.2 to avoid a temporary difficulty in enforcing other bylaws with respect to an affiliate whose leadership is disputed. Appellants are incorrect.

Construing LP Bylaw 8.2 to include an implied term is in direct violation of its explicit terms. The bylaw could not be more clear: it confers jurisdiction upon the Judicial Committee “only” over “those matters expressly identified” in its subsequent provisions. The addition of an implied term would eviscerate the plain meaning of these terms and extend the Judicial Committee’s “limited” jurisdiction to include matters that LP Bylaw 8.2 does not authorize.

Appellants contend that the Judicial Committee’s authority to extend its limited jurisdiction in this manner is to be found in LP Bylaw 5.2, which prohibits the LNC or Judicial Committee from abridging an affiliate’s autonomy, “except as provided by these bylaws.” LP Bylaw 5.2. Seizing on the quoted language, Appellants further contend that the bylaws that authorize the Judicial Committee to decide the leadership of the Massachusetts state affiliate are those enumerated in Ms. Mattson’s above-referenced Appendix A. But none of those bylaws even mention LP Bylaw 8.2, much less do they purport to modify it in any way. If these bylaws were intended to extend the Judicial Committee’s limited jurisdiction, thus amending the express terms of LP Bylaw 8.2, they would say so. They do not. The Judicial Committee should not rely on purportedly implied terms that contradict LP Bylaw 8.2’s express terms as the basis for exercising jurisdiction here.

Conclusion

For the foregoing reasons, the Judicial Committee should deny Appellants’ second appeal in this matter.

Dated: May 17, 2022

Respectfully submitted,



Whitney Bilyeu
Chair
Libertarian National Committee