

SUMMARY PAGE OF LIBERTARIAN PARTY JUDICIAL COMMITTEE RULING
in the matter of:
Andrew Cordio et. al. vs Libertarian National Committee et. al.

Date Issued: May 6, 2022

Appellants: Andrew Cordio and additional sustaining members of the Libertarian Party

Respondents: Ashley Shade, Cris Crawford, Derek Newhall, Michael Burns, Andrew Moore, Jeremy Thompson, Daniel Reik, Tara DeSisto
Libertarian National Committee (LNC)

Background:

- On April 4, 2022 we received a filing from Andrew Cordio and 242 additional signers of an appeal asking to veto a decision of the Libertarian National Committee (LNC). The specific decision being challenged was the decision by email ballot ending April 1, 2022 to uphold the LNC chair's ruling that the resolution moved by Rich Bowen on March 23, 2022 titled "Resolution to Recognize the Rightful State Committee of the Libertarian Association of Massachusetts (LAMA)" was out of order. The appeal alleged this decision was made in violation of Libertarian Party bylaws.
- The Judicial Committee held a hearing on April 28, 2022 and subsequently considered all the arguments.
- On May 6, 2022 the Judicial Committee announced votes as shown below.
- Judicial Committee members have chosen to author or co-sign the attached written statements regarding their votes.

Ruling:

Motion: To veto the LNC's decision (by email ballot ending April 1, 2022) to uphold the chair's ruling that the resolution moved by Rich Bowen on March 23, 2022 titled "Resolution to Recognize the Rightful State Committee of the Libertarian Association of Massachusetts (LAMA)" was out of order. Per LP Bylaws Article 7.12, that decision is declared null and void.

Voting Yes: Arnold, Mattson, Ruwart

Voting No: Moulton, Robinson, Turney

Recused: Supreme

The motion failed with a 3-3 tie vote.

OPINION IN APPEAL OF LNC DECISION REGARDING MASSACHUSETTS AFFILIATE
In the matter of
Andrew Cordio et. al. vs Libertarian National Committee et. al.

Opinion of Alicia Mattson voting to veto the LNC decision.

1.0 Executive Summary

Having reviewed filings by appellants representing and supporting the Libertarian Association of Massachusetts (LAMA), filings by the Libertarian National Committee (LNC), numerous amici filings, the national Libertarian Party (LP) bylaws, both the constitution and the bylaws of LAMA, Democratic Rules of Order (10th edition), and having conducted a hearing on the matter on April 28, 2022, the national Libertarian Party's Judicial Committee voted on the following motion, which was not adopted as it resulted in a 3-3 tie:

To veto the LNC's decision (by email ballot ending April 1, 2022) to uphold the chair's ruling that the resolution moved by Rich Bowen on March 23, 2022 titled "Resolution to Recognize the Rightful State Committee of the Libertarian Association of Massachusetts (LAMA)" was out of order. Per LP Bylaws Article 7.12, that decision is declared null and void.

2.0 Background

On April 4, 2022 the national LP's Judicial Committee (JC) received an appeal from Andrew Cordio, "as Chair of the Libertarian Association of Massachusetts" which appeal was also electronically signed by 242 other individuals.

Due to unique circumstances in Massachusetts state statutes, LAMA is (with no dispute asserted in this case) the entity accepted as the LP affiliate in that state.

The appeal is a result of a sequence of events which is summarized as:

- The 2021 LAMA regular convention had elected state committee members (the organization's board of directors) in accordance with its governing documents, and the state committee had elected its officers with Ashley Shade being chosen as LAMA Chair. Though Ashley Shade later resigned during the controversy at issue in this appeal, for convenience the majority of this set of state committee claimants which generally acted together will be referred to as the "Shade group."
- As time passed, some LAMA members unhappy with actions of the Shade group relied upon LAMA Constitution Article II.5 and on December 19, 2021 submitted a petition calling for a special convention along with an agenda for the special convention proposing to replace the state committee members with new state committee members.
- On January 10, 2022 the LAMA state board declared the petition to be not valid and "out of order" and the Shade group refused to organize the special convention demanded by the petition.
- Also on January 10, 2022 the Shade group voted to expel from LAMA membership all who signed the petition calling for a special convention, including two of the nine LAMA state committee members. Minutes from the Shade group assert that there were 46 petition signers, and the Cordio group in this appeal assert that there were 47 signers.

- On January 23, 2022 the LNC as the board of directors for the LP held a special meeting to review the facts relating to the developing situation within LAMA. Though some actions were proposed following the meeting, the LNC did not adopt any motions on the subject.
- The two LAMA state board members who were purportedly expelled from LAMA membership on January 10 organized the special convention demanded by the LAMA members' petition anyway. The special convention called to order on February 12, 2022, continued the meeting to February 26, 2022 and executed the proposed agenda including an election of replacement state committee members. Per LAMA governing documents, those elected by the special convention chose new officers including Andrew Cordio as LAMA Chair. For convenience this set of state committee claimants will be referred to as the "Cordio group."
- Following the events of February 26, 2022, the Cordio group asserted that it was the rightful LAMA state committee, and the Shade group asserted that it was the rightful LAMA state committee with an argument that the special convention and its actions were not valid. The Shade group has not turned LAMA assets over to the Cordio group.
- On March 23, 2022, LNC Regional Rep Rich Bowen moved and other LNC members cosponsored an email ballot to vote on a resolution (the "Bowen motion") titled "RESOLUTION TO RECOGNIZE THE RIGHTFUL STATE COMMITTEE OF THE LIBERTARIAN ASSOCIATION OF MASSACHUSETTS (LAMA)" which (besides a sequence of "whereas" clauses describing the controversy within the LAMA affiliate) contained a resolution clause, "that the Libertarian National Committee recognizes the results of election at the special convention and the State Committee elected therein."
- Upon a point of order, on March 24, 2022 the LNC chair ruled the Bowen motion to be out of order. The ruling of the chair was appealed by a subsequent email ballot ending on April 1, 2022, with the LNC voting to uphold the ruling of the chair that the Bowen motion was out of order. Thus no vote was ever taken on the underlying resolution itself.
- On April 4, 2022, this appeal was filed.
- On April 13, 2022 the appeal was amended to specifically list the LNC as an interested party, though the JC had already identified them as being such and had notified them of the appeal.
- On April 22, 2022 the LNC filed a written response to the appeal.
- With the belief that they are the rightful leadership, the Shade group held what was said to be a 2022 LAMA regular convention on April 23, 2022. As orally reported to the JC during an April 28 hearing, at this Shade group event a motion was made to reinstate the 45+ expelled LAMA members, and the motion was defeated by a vote of 8 in favor and 15 opposed, reflecting at least 23 voting members in attendance. A new state committee was elected as successors, and though it is different individuals than those dubbed as the Shade group above, they are successors under the Shade group argument of legitimacy, thus will still be generally referred to as the Shade group for purposes of this dispute. LNC Chair Whitney Bilyeu was a guest speaker at this event.
- With the belief that they are the rightful leadership, the Cordio group separately called and held what was said to be a LAMA regular convention on April 24, 2022, with draft minutes showing 37 members in attendance. This group also elected new state committee members, with 8 of the 9 being the same as those who were elected by the February 26, 2022 special convention. These successors will continue to be called the Cordio group.
- No formal written response to the appeal was ever submitted to the JC from the Shade group, though the JC did receive a sequence of individual communications from Tara DeSisto.
- On April 27, 2022 the Cordio group filed a reply to the LNC's brief.
- On April 28, 2022 the LP Judicial Committee held a hearing for arguments and testimony from designees of the Shade group, the Cordio group, and the LNC.

2.1 Basis of the Appeal

The appeal alleges that the Bowen motion:

- was improperly ruled out of order by the LNC Chair Whitney Bilyeu on March 24, 2022, and
- after the LNC Chair's ruling was appealed by the requisite number of co-sponsors for an email ballot ending on April 1, 2022, the LNC with a vote of 9 in favor and 7 opposed improperly upheld that ruling, prohibiting the resolution itself from receiving a vote.

The appeal alleges that upholding the LNC chair's ruling that the resolution was out of order is a violation of the national bylaws in that, "The actions of the LNC contravene its duties under the bylaws to recognize its affiliate which require it to interface with its proper leadership as detailed in this Judicial's [sic] Committee decision in the recent Delaware appeal. Impacted Bylaws include the entirety of Section 5. If the LNC is giving data, services, directing potential members, directing potential donors, and recognizing lists of delegates submitted by any other than the rightful leadership, it is violating its own duties to its affiliate under the national Libertarian Party Bylaws."

In a page 1 section titled "Relief Requested" the appeal asks, "That the LNC hear and decide on the matter of the Resolution by Rich Bowen and co-sponsored by Susan Hogarth, Ken Moellman, Steven Nekhaila, Joshua Smith, and Erik Raudsep..."

In a page 7 paragraph titled "Requested Ruling and Relief" the appeal requests that the JC find that, "the sustainment of the ruling of the Chair on April 1, 2022 was improper and that the motion put forth by Region 8 Representative Rich Bowen as noted above is in order and must be heard immediately by the Libertarian National Committee at an electronic meeting to be heard within seven (7) days of an Order of the Judicial Committee or via an electronic email ballot to be started within two (2) days of an Order of the Judicial Committee."

Large sections of the appeal discuss constructive disaffiliation, including a statement that "...there is a constructive disaffiliation of the Massachusetts affiliate... The Petitioners believe that is the case here." Yet the requested relief contained nothing regarding that topic. This lack of clarity resulted in disagreement among JC members as to whether the appeal was asking for a ruling on a disaffiliation question as well, or only for a ruling about the propriety of the LNC's decision that the Bowen motion was out of order.

A hearing on this matter had been initially scheduled for April 16, but it was postponed until April 28, as some JC members wanted to see whether the situation would be resolved by the two events on April 23-24, but for other JC members because if this appeal involved constructive disaffiliation, then LP Bylaws Article 5.6 requires that, "The Judicial Committee shall set a date for hearing the appeal within 20 to 40 days of receipt of the appeal..." making April 24 the earliest possible date for a hearing. During oral questioning in the April 28 hearing, though, appellants indicated they are not presently asking for a ruling regarding disaffiliation, and are only seeking a ruling on whether the LNC decision that the Bowen motion was out of order is a violation of the LP bylaws. It was indicated that the discussion of constructive disaffiliation was only intended as another path to establishing standing for Andrew Cordio to unilaterally submit an appeal regarding the Bowen motion.

3.0 Jurisdiction and Standing

The appeal asserts the JC has jurisdiction and that the appeal signers have standing under various sections of the LP bylaws:

LP Bylaws Article 8.2:

“The subject matter jurisdiction of the Judicial Committee is limited to consideration of only those matters expressly identified as follows:

- a. suspension of affiliate parties (Article 5, Section 6),
[...]
- d. voiding of National Committee decisions (Article 7, Section 12),
[...]

LP Bylaws Article 5.6:

“The National Committee shall have the power to revoke the status of any affiliate party, for cause, by a vote of 3/4 of the entire National Committee. A motion to revoke the status of an affiliate party for cause must specify the nature of the cause for revocation. The affiliate party may challenge the revocation of its status by written appeal to the Judicial Committee within 30 days of receipt of notice of such revocation...The Judicial Committee shall either affirm the National Committee's revocation of affiliate party status or order reinstatement of the affiliate party. The Judicial Committee shall issue its ruling within 30 days of the hearing and in no case later than 90 days prior to a regular convention.”

LP Bylaws Article 7.12:

“Upon appeal by ten percent of the delegates credentialed at the most recent regular convention or one percent of the Party sustaining members the Judicial Committee shall consider the question of whether or not a decision of the National Committee contravenes specified sections of the bylaws. If the decision is vetoed by the Judicial Committee, it shall be declared null and void.”

LP Bylaws Articles 5.6 and 8.2a allow an affiliate to appeal the question of their disaffiliation, but the only remedy the JC can offer in such a situation is to “either affirm the National Committee's revocation of affiliate party status or order reinstatement of the affiliate party.” The appellants have clarified they are not making such a claim in this appeal, but are merely expressing a belief that a constructive disaffiliation gives them an additional path to establish standing for Andrew Cordio to unilaterally challenge the LNC’s handling of the Bowen motion. However, this bylaw only establishes standing for a disaffiliation claim, not to overturn a vote of the LNC, thus Articles 5.6 and 8.2.a have no application here.

An appeal to overturn a vote of the LNC due to an allegation that it violates the bylaws can only be done under the process of LP Bylaws Article 7.12 with JC jurisdiction from Article 8.2.d, which requires a certain number of delegates or members submit the appeal jointly.

The appeal submitted on April 4, 2022 came with 242 electronic signatures purported to represent at least one percent of the Party sustaining members. Six of those were found to be duplicates, for a unique submission total of 236 signers. National party staff reported total sustaining membership of 16,550, thus the 10% threshold is 166. National party staff checked the membership status of the signers and found 210 of them to be sustaining members, well over the required 166. On April 14, 2022 appellants

submitted an additional 47 signatures, but the threshold had already been met, so no time was invested to identify any duplicates or verify membership status of this set.

4.0 Range of Authorized Remedies

Only one remedy is authorized under a Bylaws Article 7.12 claim that an LNC decision violated the bylaws: “If the decision is vetoed by the Judicial Committee, it shall be declared null and void.”

It is not within the range of options to craft timing orders that the Bowen resolution, “must be heard immediately by the Libertarian National Committee at an electronic meeting to be heard within seven (7) days of an Order of the Judicial Committee or via an electronic email ballot to be started within two (2) days of an Order of the Judicial Committee.” If the JC overturns the LNC’s decision (that the Bowen motion is out of order) then that decision is null and void, and the motion is in order, but the fully co-sponsored email ballot would proceed under the requirements of LP Bylaws Article 13 and other relevant LNC policy.

5.0 LNC Decision that the Bowen Motion was Out of Order - Was it a Bylaw Violation?

Under LP Bylaws Articles 8.2.d and 7.12, the JC can only “consider the question of whether or not a decision of the National Committee contravenes specified sections of the bylaws.”

The LNC argued both in its written brief and in oral arguments that the appeal does not allege any specific bylaw violation, and merely makes a general reference to LP Bylaws Article 5.

The appeal does call upon the JC to apply the “precedent” of the Delaware case. This case is being decided by the same JC members that decided that case, and the Delaware majority opinion did note, “There is no bylaw which says past JC rulings on similar-fact-pattern cases constitute binding precedent, such that a mistake made by a previous JC would compel a later JC to live with the same mistake. That is not a rule of our organization, thus it cannot compel us.”

However, this appeal can be instead viewed as merely incorporating by reference the same logical arguments contained in that majority opinion when the appeal says, “The actions of the LNC contravene its duties under the bylaws to recognize its affiliate which require it to interface with its proper leadership as detailed in this Judicial’s [sic] Committee decision in the recent Delaware appeal.” This opinion may borrow verbiage from the Delaware opinion either in quotation marks so as to correct perceptions of what it said, or without placing it between quotation marks because the text is being reused for efficiency sake rather than because the JC operates on binding precedent.

The question to be decided here is whether it was a bylaw violation for the LNC to declare the Bowen motion to be out of order. First to be considered is the basis on which the LNC chair ruled the motion to be out of order.

On April 24, on the public LNC email list, LNC Chair Whitney Bilyeu initially responded to a point of order regarding the Bowen motion with the ruling, “This motion is out of order as it violates Article 5.5 of the LP Bylaws.” Further in debate on her ruling, she mistakenly characterized this JC’s recent majority opinion regarding Delaware as, “The JC determined that it, the JC, may interfere with affiliates. As long as Article 5.5 exists as written, the LNC cannot.”

Of course the majority opinion in the recent Delaware case did not find that the JC may interfere with affiliates. It instead opined:

“The LNC respecting an affiliate’s rules and elections by working with the rightful affiliate chair (as opposed to someone who is not the rightful chair) is respecting the affiliate’s autonomy, not abridging it. The LP bylaws provide at least 15 requirements in Appendix A, including duties to interact with the affiliate and its officers, which mean that even IF applying the affiliate’s rules to determine its chair’s identity is perceived by some as an abridging of its autonomy, the LNC and other Party committees are required to do so in order to abide by these bylaws. The LNC is actually obligated by the bylaws to know who certain affiliate officers are, and if disputes arise, affiliate autonomy is preserved so long as the LNC accurately applies the affiliate’s own rules to determine with whom the LNC will work. It would violate affiliate autonomy for the LNC to substitute its own preferences for those of the affiliate and not let the affiliate’s own rules answer the question.”

The LNC Chair’s mischaracterization of the nature of the Delaware ruling is not a persuasive argument. That leaves the argument that LP Bylaws Article 5.5 (“The autonomy of the affiliate and sub-affiliate parties shall not be abridged by the National Committee or any other committee of the Party, except as provided by these bylaws”) caused the Bowen motion to be out of order. This argument is addressed by the same points in the majority opinion in the Delaware case with a need to only repeat as a summary that the LNC respecting an affiliate’s rules and elections by working with the rightful affiliate chair (as opposed to someone who is not the rightful chair) is respecting the affiliate’s autonomy, thus if the Cordio group is the rightful LAMA leadership, the Bowen motion does not violate LP Bylaws Article 5.5, and the Bowen motion only becomes a bylaw violation if the Shade group is the rightful leadership.

The LNC’s written brief introduces another argument that the Bowen motion, “does not address the impact that such action would have upon the original LAMA State Committee, which the LNC presently recognizes, and Petitioners likewise fail to address the issue. If adopted, however, the Resolution would require that the LNC revoke its recognition of the original LAMA State Committee. LP Bylaw 5.3 (‘There shall be no more than one state-level affiliate party in any one state.’).”

This argument asserts that the LNC currently recognizes the Shade group (including successors to the original group) as the rightful leaders of LAMA, thus recognition of the Cordio group would be creating a second affiliate within Massachusetts (disallowed by LP Bylaws Article 5.5), thus the Bowen motion was out of order absent the adoption of a motion to disaffiliate the Shade group.

But the Bowen motion and the Cordio group are not asking for the LNC to create a new/second affiliate in Massachusetts. If they were, the Cordio group would have submitted the paperwork required by LP Bylaws Article 5.2. Instead, the Cordio group asserts that they are the leadership of the one and only affiliate which has existed in Massachusetts for many years, and recognition of their leadership (particularly Mr. Cordio as chair) is recognition of the long-standing affiliate.

Whether or not the Bowen motion was in order, or whether the motion itself represented a potential bylaw violation, hinges on the question of who are the rightful leaders of LAMA under the LAMA governing documents which are the result of many years of decisions made by LAMA members. If disputes arise within affiliates, particularly about the identity of the affiliate chair, affiliate autonomy is preserved so long as the LNC accurately applies the affiliate’s own rules to determine with whom the LNC will work.

Affiliates routinely change their officers, often every 1-2 years with a convention. At other times affiliate chairs resign and the vacancies are filled. It does not create a new affiliate when a resignation or a convention changes leadership in accordance with the bylaws. When such leadership changes routinely occur, it normally doesn't even require an action by the LNC to recognize the leadership change. An officer within the affiliate sends an email to the LNC Chair and/or LP staff, and without dispute, internal lists are updated to list the new leadership. It usually doesn't even require a vote of the LNC to effect the change. The reason an LNC vote was proposed here is because the LNC Chair did not accept the notification of leadership change and believes the Shade group to still be the rightful leaders.

The only way for the JC to determine whether the Bowen motion was in order is to apply the LAMA's own articles and bylaws to the presented facts to identify which group represents the rightful LAMA leadership, which we do below.

5.1 LAMA Petition for Special Convention

The real start of the path to a dispute over the identity of the rightful chair (and other board members) was on December 19, 2021 when members of LAMA who were unhappy with various actions of their state committee (as the governing board of the entity) submitted signatures on a petition calling for a special convention "to elect a State Committee" and submitted an agenda for that convention. The number of valid signatures is somewhat in dispute, with the appellants saying they submitted 47 valid signatures. Minutes from the January 10, 2022 LAMA state committee meeting say, "Signed by 46 people, 1 was not a member, 2 joined after signing." That leaves a range of 43-47 valid signatures for the petition.

Prior to that date the Shade group was generally undisputed to be the LAMA officers and board members ("generally" though appendix A.10 to appellants complaint shows a member asserting that Ashley Shade's continuance as chair was in violation of Massachusetts state law, and that another state committee member was ineligible to serve due to no longer being a Massachusetts resident – neither of these issues is necessary to address here).

LAMA has both a constitution and bylaws. LAMA Constitution Article II.5 provides that,

"If 10% or 500 (whichever is less) of the current dues paying membership signs a petition requesting a special state convention, and mails or presents the petition papers to the state committee, the state committee must organize a state convention to be held between 30 and 60 days of the date of delivery of the petition to the state committee. In a single calendar year a state party member may not sign more than one petition requesting a special state convention.

The petition shall specify the agenda of the special state convention, and the state committee may, by majority vote, append items to the end of that agenda, but may not otherwise change the agenda. The quorum for a special state convention shall be 10% or 500 (whichever is less) of the current dues paying membership of the party. If one or more dues paying state party members mails or presents to the state committee a written request to assemble a petition requesting a special state convention, then, within 60 days, the state committee must inform the dues paying members of this request, and the names and contact information for the party members who made the request. Other relevant information may also be included. State party members must be informed about the petition by placing the information on the first page of the party newsletter, and prominently on any electronic media controlled by the state committee."

Minutes of the November 8, 2021 LAMA state committee (appellants Appendix A.1) reflect that Membership Director Andrew Moore reported LAMA's membership as 190. Minutes of the December 13, 2021 state committee (in appellants Appendix A.2 -- just days before the petition was submitted) do not report a membership count, but appellants offer that it was stated out loud during that meeting to be 204, and respondents have not disputed that count. No evidence has been submitted to show exactly what the membership was on December 19, 2021 when the petition was submitted, but 10% of that figure would be in a very close ballpark to 21, and certainly with at least 43 valid signatures submitted, it met the required 10% threshold in the LAMA constitution.

The only akin-to-opposition argument to the JC on the validity was in individual emails from Tara DeSisto asserting that 17 of those signers joined the party on the same day they signed the petition. No evidence of this was provided to the JC, and she provided no claim that it violated any LAMA rule. The LAMA governing documents do not require that a member must have been a member for any sort of probationary period before they can exercise their membership rights, thus assuming her complaint to be correct, that would not invalidate the 17 signatures. Even if it did, if only the low-range of 43 signers were valid, and even if those 17 couldn't be counted for some reason, it still would leave 26 valid signers, which would meet the 10% threshold.

During the hearing on April 28, the Shade group was asked whether the petition met the required threshold for the number of signers, and they offered no argument that it did not.

No persuasive argument having been made that the petition was insufficient, and their own minutes offering evidence that it was sufficient, the petition calling for a special convention met the threshold requirement of Constitution Article II.5.

5.2 LAMA State Committee Handling of Petition for Special Convention

LAMA Constitution Article II.5 quoted above is very clear that when a petition with the requisite number of member signatures is submitted, "...the state committee must organize a state convention to be held..." That article provides no subject matter restrictions for special conventions.

The January 10, 2022 LAMA state committee minutes say of the petition:

"Agenda proposed is not compliant with constitution
Agenda: Elect new state committee, Set number of committee numbers
Article 4.1 lays out requirements for those two points
Since agenda does not have constitutional change to contravene Article 4.1, agenda cannot be valid
Also out of order because date, agenda, location already selected for electing new state committee"

The minutes leave the reader presuming that was a decision of the chair, though it doesn't directly say that. It records no votes on the issue. Regardless, it seems the LAMA state committee essentially declared the petition to be invalid, and presumably did not intend to hold the special convention in spite of the clear constitutional requirement.

Interestingly, LAMA Bylaws Article IV.9: requires that "Application of the Rules of Order shall facilitate, not obstruct, the advance of business." It is a vague rule which requires a subjective judgment call be made

any time it is to be applied, but there's a good argument to be made that invalidating petition for a special convention which clearly met the numerical threshold would be an obstruction, rather than an advancement, of business. This opinion does not hinge on that argument, though.

Appellants report that December 22, 2021 was the first date the petitioners had clear indication that the LAMA state committee had no intention of carrying out their duty under the LAMA bylaws to hold the special convention. The first indication was a social media post provided with the appeal showing LAMA state committee member Tara DeSisto saying to LAMA member Brodi Elwood that, "the petition itself if [sic] an act of aggression against the SC."

A few weeks later, the January 10, 2022 LAMA state committee meeting minutes show that:

- Ashley Shade moved "to expel all members who signed the petition and refund their dues..."
- The state committee with 6 in favor and 1 opposed voted to adopt the motion to expel the petition signers.
- Ashley Shade resigned from the LAMA state committee effective at midnight that night.

Appellants further report that those expelled include two who were members of the state committee (Charlie Larkin and Janel Holmes).

Regardless of the question of whether the LAMA state committee's vote to expel the petition signers was in compliance with the governing documents, a very key point to be made is that those members were purportedly expelled well after the petition was submitted to call for a special convention. Expelling them on January 10, 2022 would not retroactively take away the validity of the petition submitted on December 19, 2021. The petition was still valid, and the state committee had an obligation to hold the special convention.

The petition was a valid call of a special convention under the LAMA governing documents, and its results should be recognized by the LNC as the will of the LAMA members.

Though the Shade group submitted no arguments to the JC regarding their rejection of the petition and why the special convention results should not be accepted, the January 10, 2022 LAMA state committee minutes record (as quoted above) an argument that the submitted agenda for the special convention called for electing state committee members and setting the number of state committee members, and that LAMA Constitution Article 4.1 (quoted below), "lays out requirements for those two points" and "[s]ince agenda does not have constitutional change to contravene Article 4.1, agenda cannot be valid." The minutes also assert the petition to be invalid "because date, agenda, location already selected for electing new state committee."

The fact that the Shade group had already begun planning a regular convention in no way precludes a special convention from happening in the interim. That is not a rule in the LAMA governing documents.

Appendix A.16 from the Cordio appeal includes an article on the website of the Shade group which argues that (underline added), "The short version is that State Committee members can only be elected at regularly scheduled conventions and since the agenda for the petition did not include an item for amending the constitution to allow a special convention to elect a new State Committee instead, it has no valid agenda and therefore is invalid as a whole." This seems to be generally consistent with the vague comment summaries recorded in the minutes.

The word “only” is rather important in that argument, as it is not a word found in the LAMA governing documents on the topic.

LAMA Constitution Article II.1:

“A Regular State Convention shall be held in every year.”

LAMA Constitution Article IV.1:

“Each Regular State Convention shall elect, as provided in the Bylaws, up to nine State Committee members.”

LAMA Constitution Article IV.3:

“The State Committee shall elect officers to fill any vacancies. The State Committee may by majority vote appoint to itself additional members.”

LAMA Constitution Article IV.4:

“All members of the State Committee shall hold office until adjournment of the next State Convention at which their successors are chosen.”

None of these provisions says that state committee members can “only” be elected at a regular convention, merely that it is a required action at each regular convention. In fact, even within the same Article IV is another provision that, “The State Committee may by majority vote appoint to itself additional members,” which allows some state committee members to be seated without having been elected at a regular convention. Even the text of the LAMA governing documents does not support the offered argument.

Further, LAMA Constitution Article IV.4 (quoted above) regarding the term of office for state committee members provides that they hold office until the adjournment of “the next State Convention at which their successors are chosen.” It does not even specify that it must be a *regular* convention, as opposed to a *special* convention. Even if it did say “regular,” the mere existence of a term of office doesn’t inherently preclude members from having a path to remove someone from office before the term ends.

If LAMA used Robert’s Rules of Order Newly Revised (RONR) as its parliamentary authority, the “only at a regular convention” argument would have a little more potential, as RONR contains a section of “principles of interpretation” (found at 56:68) and the fourth one is:

“If the bylaws authorize certain things specifically, other things of the same class are thereby prohibited. There is a presumption that nothing has been placed in the bylaws without some reason for it. There can be no valid reason for authorizing certain things to be done that can clearly be done without the authorization of the bylaws, unless the intent is to specify the things of the same class that may be done, all others being prohibited. Thus, where Article IV, Section 1 of the Sample Bylaws (56:62) lists certain officers, the election of other officers not named, such as a sergeant-at-arms, is prohibited.”

Essentially RONR at times can add an “only” to the meaning of the governing documents, though RONR also establishes default procedures for removal of elected board members if the governing documents don’t provide otherwise. But LAMA Bylaws Article IV.9 provides:

“All State Committee Meetings are run under Francis and Francis Democratic Rules of Order as interpreted by the voting members of the Committee unless specifically otherwise provided.”

Democratic Rules of Order (DRO) provides no such parallel exclusivity via interpretation guidelines, as it is a very limited manual only intended to narrowly apply to the conduct of meetings.

The LAMA constitution/bylaws themselves contain no “only” exclusivity clause, and DRO does not establish one.

Though the LAMA governing documents spell out regular elections at regular conventions, it says nothing of any process for a situation in which there is a desire by the broader membership to remove and replace someone from the executive committee. Again, if LAMA used RONR, there would be a default process for removal of a state committee member because the governing documents provide no overriding procedure. But since LAMA instead uses DRO, the general governing rule found in DRO 10th edition p. 13 is:

“Given a quorum, the will of the majority of members present and voting at any meeting held in accordance with the bylaws is the final authority and cannot be thwarted by any individual or by any previous decision, except where a higher law provides an exception (see page 5, Higher Laws).”

Further in a summary of the DRO rules on p. 78:

“The final authority is the majority of voting members, provided a quorum is present, subject always to any applicable higher law (a law of the land, a constitution, a bylaw, or an existing standing rule).”

DRO’s nature is much closer to the proverbial “tyranny of the majority” of pure democracy, though there are some constraints placed by “higher laws.” The referenced “higher laws” include “law of the land, a constitution, a bylaw, or an existing standing rule” with an important note that “standing rule” in DRO is not the same as the RONR definition of “standing rule” to which many readers may be accustomed.

LAMA governing documents say nothing of how the members may remove and replace previously-elected state committee members, and no “higher law” was argued or presented to the JC that would prohibit the membership from doing so at a special convention. The special convention was properly called with a petition in accordance with the governing documents, therefore the will of the majority of members present and voting at that special convention should be respected by the LNC so as to respect affiliate autonomy as required in LP Bylaws Article 5.5.

The LAMA state committee argument that the petition was out of order because supposedly state committee members may only be chosen at a regular convention does not withstand the simple scrutiny of other provisions of the LAMA constitution or the central tenant of DRO. In addition, the LAMA constitution clearly says the state committee can only add to an agenda of a special convention. Certainly they cannot cancel the entire agenda and override the constitutional obligation to hold the meeting. If the LAMA state committee believed that the items on the special convention were in violation of the governing documents, they were still obligated by the constitution to organize the special convention and argue the point of order to the membership at that convention.

5.3 LAMA State Committee Expulsion of Over 40 members

According to undisputed testimony during the April 28 JC hearing, at least some of those elected to the LAMA state committee by the special convention on February 12 and 26, 2022 (including the chair of the Cordio group) were among those purportedly expelled from LAMA on January 10, 2022. LAMA Constitution IV.8 requires that one be a member of LAMA to either be elected to or serve on the state committee. Thus the next step is to examine whether or not Andrew Cordio (and other petition signers) were properly expelled on January 10, 2022.

LAMA Constitution Article IV.10:

“The State Committee may by two-thirds vote of its entire membership expel a person from the State Committee, for cause, after affording the accused reasonable access to due process.”

LAMA Bylaws Article I.3:

“The State Committee may for cause by 2/3 secret ballot vote of the entire State Committee expel a person from membership in the Libertarian Association of Massachusetts;”

The appeal notes that two of the expelled members were also state committee members, and that with allegedly almost no notice for the January 10, 2022 meeting there was certainly not “reasonable access to due process” for those two individuals. This seems a strong argument, but neither of the expelled state committee members was the person chosen by the special convention to be LAMA Chair, and given the dispute over whether he is now the chair, the LNC primarily needs to know whether Andrew Cordio is the affiliate chair.

Rather this opinion will focus on the propriety of the single vote on January 10, 2022 to expel from LAMA membership the 40+ petition signers, including the two state committee members (there is no need to tread into a question as to whether state committee members could be removed in this manner as opposed to the manner from LAMA Constitution Article IV.10).

LAMA Bylaw Article I.3 quoted above provides a method by which the state committee may expel a person from membership in LAMA, but notably it requires that it be “for cause.” That phrase is not defined in the LAMA constitution or bylaws, nor is it defined in DRO. Without an express definition, the threshold of cause is not particularly high.

However, the January 10, 2022 LAMA state committee minutes are quite revealing. The recorded comments make clear that there was a desire to remove those who were members in the Mises Caucus because the Shade group disliked the caucus goals.

- The minutes say state committee member Jeremy argued it is time to, “remove members who signed the petition” and “It is not fair to usurp the will of the last convention for a malicious caucus.”
- The minutes say another state committee member, Janel, disagreed, noted that not all petition signers are members of the Mises Caucus, and urged her colleagues to “treat people as individuals and not as a group.”
- The minutes say state committee member Cris expressed disagreement with the goals of the Mises Caucus.
- Finally the minutes say Ashley Shade conceded that, “Everyone who signed the petition is not in the wrong, only the organizers” yet proceeded to “suggest to expel all the members and let them

back in on a case-by-case basis.” Then Ashley Shade moved to expel, “all members who signed the petition.”

These recorded comments make very clear that they knew not all who were expelled were guilty of the “cause” for which the Shade group truly wished to expel members, but perhaps because they couldn’t accurately parse the list for who was or wasn’t guilty (see comments noted from January 23, 2022 LNC meeting below), they instead expelled for the “cause” of being a petition signer.

Besides the minutes, there are other statements made by LAMA state committee members about the cause:

- Appellant’s appendix A.5 provided a December 22, 2021 social media post in which LAMA state committee member Tara Desisto wrote to LAMA member Brodi Elwood, “the petition itself if [sic] an act of aggression.”
- In the January 23, 2022 LNC meeting which discussed these disputed actions within Massachusetts:
 - Following a question at video time stamp 00:58:54, LAMA state committee member Cris Crawford said, “Well, see, we don’t have any way of knowing who the – which of the petition signers were – had eyes wide open that this was a Mises Caucus attempt to take over our convention. We don’t know which ones were, and there’s no way to know because the Mises Caucus hasn’t provided us with their membership list.”
 - Following a question at 01:04:03 about whether the actions were specifically to remove Mises Caucus members, Cris Crawford responded that no, it was to remove those who signed the petition. On a follow-up question as to whether members are allowed under LAMA governing documents to submit the petition, Cris Crawford answered, “Technically, they are but we deemed it fraudulent. [overtalk] was the cause. And their actions were fraudulent.” With a follow-up question, “Any reason why it was deemed a fraudulent action?” Cris responded, “Well, yes, because they were part of the national campaign to take over state parties by the Mises Caucus, and it was organized by the Mises Caucus of Massachusetts.”
- Appellant’s appendix A.16 is a copy of a March 6, 2022 blog post on the website of the Shade group. It generally says the public comments made by Ashley Shade and Cris Crawford explain the reasons for the expulsion, but, “one of the most cited aspects of the decision is that the petition was organized by a controversial PAC calling themselves the ‘Mises Caucus’ who has stated their goal is ‘taking over’ the Libertarian Party.”
- Further in Appellant’s appendix A.16, the Shade group’s blog article argues, “even if the signers were ill-informed participants, they still engaged in an action specifically designed to harm the party through ejecting the State Committee...”

Various members of the Shade group have argued the cause for the expulsion was for signing the petition for a special convention, as it was an effort by a caucus within the party to earn leadership seats. Most caucuses in the party desire to elect their caucus members to a majority of seats at various levels of party leadership, and this is nothing new or inherently improper. It is how political movements work.

The LAMA constitution expressly grants the LAMA members the right to petition for a special convention, and there is no rational argument that when the LAMA bylaws allow a “for cause” expulsion that the cause could possibly be for exercising their expressly stated LAMA constitutional rights.

Andrew Cordio and the other petition signers were not expelled “for cause” in accordance with LAMA governing documents, thus there is no reason for the LNC not to recognize him as the rightful LAMA chair.

6.0 Proposed Ruling

Since the LAMA members’ petition for a special convention was valid, and the LAMA constitution requires the special convention to be held, and Andrew Cordio and his colleagues were not expelled for cause by the LAMA state committee, and Andrew Cordio was elected by the special convention to the state committee which elected him as LAMA chair, the LNC is obligated by the LP bylaws to recognize him as the actual affiliate chair.

Since the Bowen motion is to recognize the rightful chair of LAMA according to the LAMA governing documents, the motion does not violate either LP Bylaw Article 5.5 or 5.3. Since the LNC rationale for ruling the motion to be out of order was based on instead recognizing the Shade group as the rightful leaders of LAMA, the LNC’s decision that the motion was out of order was itself a violation of the various bylaw requirements (for efficiency sake, reference the appendix in the prior Delaware ruling) for the LNC to recognize and interact with the actual leaders of the actual affiliate. For LP bylaw compliance, the LNC in some way is obligated to recognize the rightful affiliate leadership, whether that be done unilaterally by the LNC chair, by adoption of the Bowen motion, or by adoption of some different motion which achieves the same effect. Ruling a motion to be out of order with an argument that the LNC recognizes someone other than the rightful affiliate leadership is not compliant with the LP bylaws.

Therefore, the LNC decision to rule the Bowen motion out of order contravenes the bylaws, should be vetoed by the JC, and would be null and void under LP Bylaws Article 7.12.

This case did not raise a question of disaffiliation, but if the opposing arguments made about LP Bylaw Article 5.5 were accepted, it would allow any affiliate to be disaffiliated in ways other than the “for cause, by a vote of 3/4 of the entire National Committee” as required by LP Bylaws Article 5.6 – including by unilateral decision of an LNC chair, by LNC inaction, or by a simple majority vote to say a legitimate motion was out of order.

7.0 Note of Caution

This JC has been obligated to rule on several controversial issues, and it is concerning that some members have been approaching these cases as though they are political lobbying efforts to a political body. There have been efforts to rally large numbers of people to email the JC in support of one side or the other, or even parties to the case have submitted numerous resolutions adopted by various affiliates or sub-affiliates agreeing with one side or the other. This is inappropriate if those submissions provide the JC no new facts or parliamentary arguments, but are merely trying to show how many people hold a given opinion. The number of people who hold an opinion is only relevant to the extent needed to establish standing under a rule requiring a certain number of appeal signers. Beyond that, the number of people who hold a given opinion is irrelevant to the JC task of interpreting rules. If the party members want the JC to remain a body for neutral rules interpretation, it is a grave mistake to approach it with such political persuasion tactics. The LNC is a political body, and if the members are going to turn the JC into just another political body, what’s the point?

Ruwart Opinion in the Matter of Massachusetts Dispute

Concerns with the Interpretation of LP Bylaw 5.5

After evaluating both the Delaware and Massachusetts disputes, I have concluded that the delegates in Reno should seriously consider giving both the LNC and JC guidance surrounding the often-cited LP Bylaw 5.5: “The autonomy of the affiliate and sub-affiliate parties shall not be abridged by the National Committee or any other committee of the Party, except as provided by these bylaws.”

In the Delaware case, the LNC felt that deciding between the two disputing boards would be a violation of Bylaw 5.5. Instead, it gave both disputing boards the monthly data dump which should only be provided to an affiliate. However, since only one board could be the rightful one, that meant that confidential information was being supplied to a group that was not the appropriate leadership. As a result, both sides claimed that they had been “constructively disaffiliated.”

In the Massachusetts case, the LNC gave one of the disputing boards the data dump without trying to ascertain, as near as I can tell, which board was the rightful one. In addition, the LNC Chair attended the convention held by one side, but not the other. It ruled the Bowen resolution out-of-order. Through all of this, it claimed that all of its action honored Bylaw 5.5.

These three actions of the LNC certainly gave me the impression that the LNC was picking sides without appropriate due process, all the while claiming to be upholding the neutrality that it believed Bylaw 5.5 required. My vote to overturn was based in part in what I perceived as inconsistency on the part of the LNC’s argument that it was respecting the autonomy of the affiliate.

Perhaps the LNC should have withheld the data dump from both disputing boards until they settled their differences. However, especially close to an election, failure to identify an affiliate or giving it the data dump could hinder their electoral effectiveness.

Potential Clarifications of LP Bylaw 5.5

Ideally, every affiliate should have its own JC to settle its disputes. However, especially in the case of small affiliates, this may not be practical as those who would serve on the board may likely be the same individuals that the membership would like to see on their state’s JC.

The Mattson opinion in the Delaware case stated that the LNC must know its affiliate and thus had the duty to decide which board is the legitimate leadership when possible. As near as I was able to discern, the LNC never did the research necessary to determine which state board was the legitimate leadership. In both cases, most members of the JC felt that the rightful

leadership could indeed be discerned. However, some JC members believed that Bylaw 5.5 prohibited both the LNC and the JC from articulating which leadership was the rightful one.

One interpretation of Bylaw 5.5 is that, regardless of whatever offenses that one board might make against the state's own bylaws, the JC and LNC cannot express an opinion without violating state autonomy. However, if a state has no JC to settle a dispute, is it legitimate for the LNC to choose its affiliate when one group has flaunted its own bylaws? If so, under what conditions? Can the JC decide if appealed to? Would doing so violate LP Bylaw 5.5? Do the delegates and membership want the JC and LNC to express no opinion rather than settle the matter in cases where one board can be reasonably be identified as the rightful leadership? I lean towards believing that the delegates would want the LNC or JC to accept one board over another when the other board egregiously violated their state's own bylaws, as was the case in both of these disputes.

The Moulton opinion in the Delaware case is that the board which holds most of the affiliate's assets should be recognized. I dislike this way of choosing an affiliate, as an outgoing board can simply refuse to hand over affiliate assets to the incoming, duly-elected one and thus retain its leadership indefinitely. I am gratified to see the Moulton opinion in this case seeks to suggest bylaws that might make the path of the next JC (and possibly the LNC) more straightforward.

It would be immensely helpful to the next LNC and JC for the Reno delegates to clarify their intention behind Bylaw 5.5 to the greatest extent possible.

My Process in This Case

The JC was asked to overturn the ruling of the Chair and allow the Bowen Resolution to come to an LNC vote. My first inclination was to vote against overturning the Chair, especially because the LNC itself had endorsed the Chair's ruling and because the Bylaws instruct the JC to put the burden of proof on the appellant. Even if the JC ruled that that the vote should proceed, I suspected that the current LNC would vote it down, as those who endorsed the Chair's ruling would likely vote against the resolution.

Simply by giving monthly data dumps to one set of claimants to the state committee but not the other, the LNC was, in my opinion, giving the appearance of choosing sides without any obvious due process, instead of honoring the affiliate's autonomy. The Chair's attendance at the convention called by one of the two state committees, but not the other, also gives the appearance of choosing a side. These actions, which appear to show bias, made me concerned that ruling the Bowen resolution out-of-order was also a way of choosing sides without any consideration given to the claims of the appealing board.

On the other hand, I recognize that the LNC is in a difficult position in that it cannot discipline an affiliate by disaffiliating it this close to the National Convention. However, the LNC could have refused to give either side a data dump if it wanted to be even-handed. The Chair could

have attended both conventions or neither. The Bowen resolution could have been allowed to go forward even though it was likely to be voted down. These actions would have been more consistent with the LNC's claim that its actions were intended to honor the autonomy of the affiliate.

Indeed, as the Mattson opinion pointed out in the Delaware case, the LNC has a duty to make sure that it does know the leadership of its affiliate. As near as I can tell, the LNC made no attempt to learn if the proper leadership was easily discernable. It's likely that there may be cases where such discernment is impossible or very difficult. However, this was not the case in the opinion of most of the JC members for some of the reasons stated in the Mattson analysis of both disputes.

I appreciate that the affiliates do not want the LNC, or the JC for that matter, "interfering" in their affairs. However, the flip side is that when leadership of an affiliate is in dispute, there is no LP authority to settle the case if the affiliate does not have its own JC. Instead, years of litigation, infighting, and instability result. Do we want the state courts to decide who our affiliate leadership is? Can the delegates in Reno come up with some guidance for the LNC and JC in handling such cases?

In the matter of:

Andrew Cordio et. al. vs Libertarian National Committee et. al.

As usual, I see things in a different light than my fellow members of the Judicial Committee.
Per the motion before us:

Motion: To veto the LNC's decision (by email ballot ending April 1, 2022) to uphold the chair's ruling that the resolution moved by Rich Bowen on March 23, 2022 titled "Resolution to Recognize the Rightful State Committee of the Libertarian Association of Massachusetts (LAMA)" was out of order. Per LP Bylaws Article 7.12, that decision is declared null and void.

My initial inclination was to that the chair, and subsequent LNC board vote was made in good faith, following the bylaws. That meant the ruling of the chair should be upheld. During the course of the JC hearing arguments made by Mr. Oliver Hall, for the LNC, seemed to sustain my belief. LNC Chair Whitney Bilyeu then made a statement relating to the danger of turning over the LNC to the Mises Caucus. This led me to believe that her ruling was not made in good faith with the bylaws. It was motivated by a personal political agenda. Thus, my yes vote.

Tom Arnold, LNC Judicial Committee

1. Ruling

With respect to the specific question the Judicial Committee voted on, I ruled as follows.

On the statement “Ruling: to veto the LNC’s decision (by email ballot ending April 1, 2022) to uphold the chair’s ruling that the resolution moved by Rich Bowen on March 23, 2022 titled ‘Resolution to Recognize the Rightful State Committee of the Libertarian Association of Massachusetts (LAMA)’ was out of order. Per LP Bylaws Article 7.12, that decision is declared null and void.” I voted no. I profoundly disagree with the Mattson opinion’s reasoning and its conclusions. LNC Chair Whitney Bilyeu was entirely correct to rule the motion out of order as violating LP Bylaw 5.5 (“The autonomy of the affiliate and sub-affiliate parties shall not be abridged by the National Committee or any other committee of the Party, except as provided by these bylaws.”) and the LNC was entirely correct in sustaining the ruling of the chair.

2. McVay vs LNC & Hinds vs LNC

The majority opinion of this Judicial Committee in the Delaware case was a disaster. The present Massachusetts case is an early opportunity (and there will be many others) to say “I told you so”. According to the Delaware majority an implicit need to know who is the leadership of an affiliate created a Judicial Committee and Libertarian National Committee power out of thin air to arbitrate state affiliate internal bylaws disputes in direct contravention of the plain language of the explicitly spelled out LP Bylaw 5.5 (“The autonomy of the affiliate and sub-affiliate parties shall not be abridged by the National Committee or any other committee of the Party, except as provided by these bylaws.”). That is of course absurd.

Predictably (and I mean that literally because I foresaw all of these things in my dissent):

- state affiliates are lining up to submit their internal bylaw and leadership disputes to the Libertarian National Committee and to the Judicial Committee
- the LNC and JC have wasted countless volunteer hours arbitrating these disputes
- LP Bylaw 5.6 is now dead letter, as some LNC members think it may effectively disaffiliate using a majority vote of those present (rather than 3/4 of the entire committee), including less than 6 months before a national convention
- many are attempting to frame these disputes as political popularity contests, submitting lists of members and state & local affiliates who agree with them rather than focusing amicus briefs on substantive parliamentary points

3. Facts of Massachusetts

On December 13, 2021 the Libertarian Association of Massachusetts [hereinafter, “LAMA”] state committee adopted a “Standards of Behavior” resolution. In response to this resolution, which he considered “un-libertarian”, local affiliate leader Dan Garrity organized a petition for a special convention under LAMA Constitution II.5 at which the state committee would be up for election. This petition was signed by 47 LAMA members, which met the Constitution II.5 threshold: 10% of current LAMA dues-paying members. On January 10, 2022, the LAMA state committee expelled from

membership all 47 signers (including 2 state committee members) of the special convention petition. Petitioners organized the special convention that the state committee refused to facilitate, which was held on February 12, 2022 over Zoom and continued on February 26, 2022 in Worcester, MA. This special convention purported to elect a new state committee. Both groups – the Shade committee [hereinafter, “LAMA-1”] and the Cordio committee [hereinafter, “LAMA-2”] – scheduled state conventions to select a new state committee: LAMA-1 on April 23, 2022 and LAMA-2 on April 24, 2022. At LAMA-1’s state convention, delegates voted not to reinstate the 47 purged members.

On March 23, 2022, Region 8 Representative Bowen moved an email ballot to vote on a resolution titled “Resolution to Recognize the Rightful State Committee of the Libertarian Association of Massachusetts (LAMA)”, which would have the effect of recognizing the LAMA-2 leadership instead of the LAMA-1 leadership. LNC Chair Bilyeu ruled the motion out of order for violating LP Bylaw 5.5 on March 24, 2022 and the ruling of the chair was sustained by an LNC vote ending on April 1, 2022. On April 4, 2022 the LP Judicial Committee received an appeal under LP Bylaws 7.12 / 8.2.d seeking to void the LNC decision that the motion was out of order.

Unlike the Delaware case, LAMA-2 has not claimed constructive disaffiliation or asked the Judicial Committee to recognize LAMA-2 over LAMA-1. Instead, they have only asked that the LNC decision be voided and that the LNC vote proceed, which is rather odd. It seems likely whichever side would lose if that vote were to take place would immediately appeal to the Judicial Committee. LAMA-2 could already claim constructive disaffiliation by virtue of its treatment with respect to linking to the affiliate website, access to national member data through the CRM, etc. By failing to make those claims until after the Judicial Committee rules on the present case, LAMA-2 has run out the clock making a future decision impossible before the national convention.

The fact pattern before us is a classic case of “everyone sucks here” (to employ the terms of the AITA reddit). The Mises Caucus would almost certainly have succeeded in taking over LAMA if it waited 2 months for the regularly scheduled state convention. Unfortunately, a lack of patience and basic political etiquette led them to jump the gun employing a probably legitimate but incredibly controversial special convention procedure to wrest control of the organization slightly early. The existing state committee LAMA-1 could have simply accepted the petition as valid and organized the special convention. Instead, they purged the membership of their political opponents to prevent an early vote and rig the vote of the upcoming regular convention. Both sides were eager to create a mess to gain power, wasting everyone’s time in the process.

4. LNC Chair Ruling & LNC Sustaining of that Ruling

LNC Chair Bilyeu is entirely correct that the resolution violates the clear language of LP Bylaw 5.5 (“The autonomy of the affiliate and sub-affiliate parties shall not be abridged by the National Committee or any other committee of the Party, except as provided by these bylaws.”). If the LNC wishes to recognize a different affiliate than LAMA-1 then it must disaffiliate LAMA-1 under LP Bylaw 5.6 (“The National Committee shall have the power to revoke the status of any affiliate party, for cause, by a vote of 3/4 of the entire National Committee.”) and charter LAMA-2 under LP Bylaw 5.2 (“The National Committee shall charter state-level affiliate parties from any qualifying organization requesting such status in each state, territory, and the District of Columbia (hereinafter, state).”). The first step is not even possible at this time because LP Bylaw 5.6 restricts its applicability immediately before a national convention (“The

National Committee shall not revoke the status of any affiliate party within six months prior to a regular convention.”).

The LNC has no power whatsoever to side-step LP Bylaw 5.6. If there is a dispute over which leadership to recognize and the LNC declines to utilize its disaffiliation power, then it takes no motion to resolve that dispute from the national LP’s perspective. The LNC, the LNC chair, and staff should follow the Wagner rule as clarified by Bill Hall¹, looking for continuity: “(a) Which group is recognized by the State as having ballot access?, (b) Which group has possession of the property of the affiliate (funds, websites, state mailing list)?, (c) Which group in a more general sense (campaign finance filings, contracts, etc.) is the affiliate under State law?”. To look at the merits of a state affiliate internal bylaws dispute would be wrongly claiming the LNC or the JC are the ultimate arbiters of state affiliate bylaws and can meddle in the affairs of state affiliates, in direct contravention of LP Bylaw 5.5. This would flip the very setup of the party on its head, from its current system of federalism with 51 state affiliates which enjoy wide autonomy to a top-down, centrally controlled organization.

Chair Bilyeu is also correct that petitioners have not alleged any bylaw was violated to trigger an avenue for appeal under LP Bylaw 7.12. In fact, it is the reverse: petitioners are annoyed that the LNC is actually following the bylaws. The Judicial Committee has no subject matter jurisdiction here.

5. LAMA-1 vs. LAMA-2: Special Convention and Member Purge

The Mattson opinion does an excellent job of analyzing the bylaws dispute of the Massachusetts affiliate in 5.1, 5.2, and 5.3. I entirely agree with her reasoning and would join in her opinion if we were the Judicial Committee of LAMA or we were authorized and instructed by the national LP Bylaws to arbitrate state affiliate bylaws disputes. However, that would violate the constraints of LP Bylaw 5.5; therefore, in my capacity as a national LP Judicial Committee member I cannot rule on those issues – especially since that relief was not requested in this case and any musings on which group is the legitimate leadership of LAMA would be dicta. If the petitioners had asked us to rule on constructive disaffiliation, I would apply the Wagner criteria as clarified by Bill Hall with straightforward results.

6. Paths Forward

Ultimately, whatever group (LAMA-1 or LAMA-2) is recognized by the LNC, the JC, the Credentials Committee, or national convention delegates has no impact on whether either of those two groups will continue existing claiming to be legitimate affiliate, whether either of those two groups can run candidates, and whether either of those two groups will turn over assets such as bank accounts, websites, social media, data, etc. to the other. Anyone who thinks otherwise does not understand corporate law, non-profit law, or election law. I hope LAMA-1 and LAMA-2 can eventually merge back together and get along; however, nothing this JC can say or do will have that outcome; LP members within Massachusetts must make it happen themselves.

Within Massachusetts, if LAMA-2, national LP members, or registered Libertarians are dissatisfied with LAMA-1’s organization, control of the assets, or recognition by the LNC, they have several paths forward. First, they can use the political process to participate in LAMA-1, become members in good standing, show up at the next state convention, and vote in state leadership candidates of their choice who may amend the bylaws in ways they prefer and reverse the blanket purge. Second, they can litigate

¹ See my dissent in *McVay vs LNC & Hinds vs LNC* (2022) [hereinafter, “Delaware”] for more details.

their bylaws dispute in a court of law to seek a judge's order compelling that the organization and assets of LAMA-1 be turned over to them. Third, they can abandon the assets of LAMA-1, start from scratch building up their own resources, and persuade the Libertarian National Committee to disaffiliate LAMA-1 (for cause, by a 3/4 vote of the entire national committee, not in a period of 6 months prior to a national convention), then affiliate LAMA-2 as the new Massachusetts affiliate (unlike Delaware, this will not require the national party to waste \$50,000 re-acquiring ballot access because LAMA-1 was not ballot qualified).

Disaffiliation is hard to exercise. That is a feature, not a bug. However, it may well be that national LP bylaws are too restrictive with respect to disaffiliation and recognition of competing slates of leadership. I serve on the 2022 LP Bylaws Committee. We have proposed a number of amendments concerning these very issues. First, we have proposed a bylaw change explicitly granting the Judicial Committee the power to arbitrate internal affiliate party bylaws disputes. If that is a power national convention delegates believe should be vested in the subject matter jurisdiction of the Judicial Committee, the right course of action is to explicitly give the body that power rather than watching the body claim that power for itself in direct contravention of LP Bylaw 5.5. Second, we have proposed making it easier to disaffiliate outside of the 6-month window by lowering the requirement from 3/4 of the entire national committee (which has been shown to be impractical to muster even in slam dunk cases) to 2/3 of the entire national committee. Third, we have proposed making it possible to disaffiliate within the 6-month window using a higher threshold of 3/4 of the entire national committee. Fourth, we have proposed defining acceptable causes for disaffiliation rather than leaving that up to the discretion of the LNC and the JC. I am very sympathetic to the arguments in many of these cases; however, I am constrained to follow the bylaws. Change the bylaws and the rulings of future Judicial Committees will change accordingly.

In the matter of:
Andrew Cordio et. al. vs Libertarian National Committee et. al.

I concur with Chuck Moulton's opinion except for his part 2, "McVay vs LNC & Hinds vs LNC".

I see the Libertarian Association of Massachusetts (LAMA) appeal as significantly different than the LP Delaware appeals of late last year.

Both groups claiming leadership of Delaware LP appealed claiming "constructive" or "de facto" disaffiliation,
An LNC motion for Delaware LP disaffiliation had recently failed,
The appeals were just within the six month window when formal disaffiliation is no longer allowed,
The appeals were at the beginning of critical months in the LNC relationship with LP Delaware leadership.

This unusual set of circumstances created the cause for the Judicial Committee to rule which leadership should be recognized by the LNC, necessitating a compelling circumstance for the Judicial Committee to reluctantly examine the LP Delaware bylaws to provide a ruling to the LNC as requested by both appellants.

In the LAMA case, there are two groups claiming to be properly elected leadership but there was no appeal for relief from a "constructive" disaffiliation caused by the LNC's sustained ruling of the chair, nor appeal at all from the longer recognized group claiming continued leadership. In any case, the timing of the appeal means a determination of LAMA leadership to have no significant consequence for which leadership group is recognized by the LNC.

I find there is not sufficient justification to consider a deviation from our default required respect for affiliate autonomy. An examination of affiliate bylaws to determine properly elected leadership is not usually a matter the LNC or JC should be undertaking, especially within six months of a national convention.

Jim Turney, LNC Judicial Committee

Opinion: Affiliation Revocation and the Six Month Rule

Libertarian Party Bylaws Article Five, Section 6 states: The National Committee shall not revoke the status of any affiliate party within six months prior to a regular convention.

Why did the Founder's create such a rule and why it has been sustained continuously by all subsequent conventions?

The Six Month safe harbor rule was adopted by the committee I chaired at the founding convention in Denver in 1972 to preserve the right of the national convention delegates to determine their own composition. It was also intended to prevent the Judicial Committee members from officially injecting themselves into affiliate party factional disputes and to deter affiliate party factions from seeking official sanction from the Judicial Committee and thereby undermining the national convention delegates authority. Based on our observations of the corrupt behavior of the duopoly parties we thought it likely that bad habits would be taken as good practices for any political party.

State affiliate party autonomy ends when a national convention begins and only resumes after the national convention adjourns – unless the delegates have revoked such autonomy by amending the Bylaws.

Therefore, because the National Committee has no authority to revoke the status of an affiliate, the Judicial Committee has no authority to adjudicate any affiliation dispute in the period six months prior to a national convention.

Once a national convention has convened the delegates may direct the Judicial Committee members to offer opinions on any disputes within the Judicial Committees bylaws jurisdiction. Or the national delegates may amend the jurisdiction of the Judicial Committee to extend or further limit the jurisdiction of the Judicial Committee.

Individual members of the Judicial Committee may offer their personal opinions as members regardless. Official opinions these particular disputes must now only be rendered at the request of the national convention delegates to hear the appeals of the contending factions. Nonetheless, the national convention delegates are the jurors and their verdict is final.

I have no official opinion on the merits of the present affiliation disputes. My official opinion here regards the application of Article Five, Section 6's Six Month Rule.

Signed,

D. Frank Robinson
Member, Libertarian National Judicial Committee
May 8, 2022