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July 12, 2024

Via first class mail, e-mail

Elections Division
Oregon Secretary of State
255 Capitol Street NE
Salem, OR 97310
Elections.sos@sos.oregon.gov

RE: Libertarian Party of Oregon, possible violation of ORS 248.009

Dear Elections Division, Oregon Secretary of State,

Our law firm is General Counsel for the Oregon Republican Party. We bring to your attention the fact that it appears that the Libertarian Party of Oregon (LPO) is about to violate ORS 248.009 by nominating candidates in violation of its organizational documents. ORS 248.009 dictates, “[t]he minor political party shall nominate candidates for public office only in accordance with the procedures set forth in its organizational documents” (emphasis added). As your predecessors knew, the Oregon Court of Appeals (2018), the Libertarian National Committee (2011), the Libertarian Party of Oregon Judicial Committee (2013), the Libertarian Party National Judicial Committee (2015 and 2016) all determined that the organizational documents the current LPO is using, are not the legitimate organizational documents.

It is our understanding that the LPO is holding a meeting this coming weekend (July 13), and has publicized that candidates may be nominated. However, any Certificate of Nomination deriving from that meeting cannot possibly be properly authorized when the nominations do not come from the process called for, and adopted from, the legitimate governing documents.

Any Certificate of Nomination filed as a result of using organizational documents improperly filed under ORS 248.009(1) could also result in violations of ORS 249.720(3) and ORS 249.810, and ORS 248.009(2). We know the SOS prefers to not interpret party bylaws, but the Court of Appeals has ruled the Secretary of State can and sometimes must do when necessary to perform its functions, and your office has recently done so again with the Pacific Green Party.

The legitimate organizational documents whereby candidates could properly be nominated by the LPO for partisan public office under ORS 248.009(1) are those which were recognized as legitimate according to the party's highest authority, the Libertarian Party National Judicial Committee in 2015 and 2016 and the Libertarian Party of Oregon Judicial Committee in 2013. Stated another way, as noted by the Court of Appeals, “ There is no provision in either the 2007 constitution or the 2009 bylaws for the State Committee to amend or replace the bylaws. *Reeves v. Wagner*, 295 Or. App. 295, 304 n.8, 434 P.3d 429, 435 (2018). The by-laws the LPO is

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using – an appears to be using for coming nominations -- were purportedly adopted in a State Committee meeting, those facts were not disputed in the lawsuit. Yet those invalid-bylaws are precisely the “organizational documents” and origin of what the LPO continues to use today even though the Court of Appeals explained the LPO had no process or provision in its 2007 Constitution, or 2009 Bylaws, allowing such a change. *Id* at 299. The Court of Appeals went on to explain, “as alleged in the second amended complaint, the bylaws adopted on March 31, 2011, did not comply with those requirements. On the face of the record, there are no factual disputes on that question”. *Reeves v. Wagner*, 295 Or. App. 295, 299, 434 P.3d 429, 432 (2018). Since these facts were not, and are not in dispute, those documents cannot produce legal nominees.

The Circuit Court and Oregon Court of Appeals noted that under the terms of the 2007 Constitution and 2009 bylaws, the LPO's "Judicial Committee" is the final arbiter of disputes concerning an interpretation of bylaws. *Reeves v. Wagner*, 295 Or. App. 295, 302 n.7, 434 P.3d 429, 434 (2018). The national Libertarian Party Judicial Committee has ruled on this issue stating, “The 2007 Constitution and the 2009 Bylaws of the Libertarian Party of Oregon in effect throughout 2011 do not provide for any possibility to amend the Constitution or Bylaws outside convention nor do they grant the power to cancel a meeting of the convention, called by the convention itself, to any power outside the convention. See Exhibit 1.

Accordingly, we hereby request that the Secretary of State Elections Division, reject any Certificate of Nominations coming from the Libertarian Party of Oregon that derive from the illegal and improper organizational documents. Unless the LPO nominates its candidates in accordance with the organizational documents recognized as being legitimate by the Libertarian National Party Judicial Committee (the 2007 Constitution, and 2009 Bylaws as amended in 2013), then the nominations cannot be accepted because they would be in violation of ORS 248.009. Please let us know your decision on this matter if the LPO does in fact nominate candidates using those invalid organizational documents.

Best wishes,

Tyler Smith

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Judicial Committee of the Libertarian Party
Clarification of our September 2015 Ruling
February 20, 2016

All six of the questions asked in Libertarian Party of Oregon's Request for Clarification of our 2015 ruling turn on two more fundamental questions: a) Did Wes Wagner have the power to cancel the May 21, 2011 meeting of the LPO convention, which had been called by the convention itself? and b) Did five members of the LPO, not meeting in convention on March 31, 2011, have the power to replace the Constitution and Bylaws of the LPO? If the answer to either or both of the above questions is No, then the answers to the six questions in the Request for Clarification follow directly. Likewise, if the answer to both of the above questions is Yes, then the answers to the six questions in the Request for Clarification follow directly.

We are not the first body to consider these questions. The Libertarian National Committee (LNC) decided No to both questions in 2011. The Oregon Secretary of State's office decided in 2011 that it would not decide these questions, that these questions could only be decided by the Libertarian Party or by a court of law. Three Oregon judges have considered these questions. The first two determined that the answer was likely to be No to both questions and that the case should proceed to trial. The third judge did not answer Yes to either question, but opined that even if five members of the LPO were to have the power to replace the Bylaws, that they certainly could not have replaced the LPO's Constitution outside convention. Counsel for both sides stipulated that the LPO's Constitution was not replaced in 2011. The third judge then ruled that the questions before it should be decided by the Party, not by the courts, and denied all of the motions for summary judgement submitted by both sides. The Judicial Committee of the LPO considered these questions in 2013 and answered No to both questions. In 2012, the highest body of the Libertarian Party, the delegates assembled in a National Convention, implicitly answered No to these questions by seating the Reeves/Epstein delegation rather than the Wagner/Hedbor delegation. No authority inside or outside the Libertarian Party has ever determined either that Mr. Wagner's purported cancellation of the May 21 meeting of the convention was valid or that the alleged Constitution and Bylaws, purportedly adopted by five members of the LPO outside convention on March 31, were in any way valid.

Therefore the answer to the two questions above is plainly No. The 2007 Constitution and the 2009 Bylaws of the Libertarian Party of Oregon in effect throughout 2011 do not provide for any possibility to amend the Constitution or Bylaws outside convention nor do they grant the power to cancel a meeting of the convention, called by the convention itself, to any power outside the convention. This has been stipulated by both factions. No authority inside or outside the Libertarian Party has ever found merit in the counterargument based on Mr. Wagner's interpretation of Oregon state statutes. However, even if Mr. Wagner's interpretation had merit, we would be forced to reach the same conclusion because counsel for both sides stipulated in court on May 16, 2013 that the LPO Constitution could not have been replaced outside the convention.

Any one of the above reasons forces us to answer the questions in the LPO's Request for Clarification as follows:

1. This is the wrong question. The next question is the right question.
2. No, the National Chair is in violation of Article 6.5 of our Bylaws by sending membership data to persons other than the officers of the LPO who were elected by the members of the LPO in convention and by linking to a website other than the website under the control of the duly elected officers.
3. This is a question for the LNC, not the Judicial Committee. The LNC has the power to enforce its own decisions upon the Chair.
4. The National Chair should comply with Article 6.5 of our Bylaws by sending membership data to the officers of the LPO who were elected by the members of the LPO in convention and by linking to the website under the control of the duly elected officers.
5. The current Chairperson of the Libertarian Party of Oregon, PAC 622, is Ian Epstein.
6. The current Bylaws of the Libertarian Party of Oregon, PAC 622, are the Bylaws adopted by the members of the LPO at the March 9, 2013 convention, the last convention at which they were amended.

M Carling, LLM (Chairman), Rebecca Sink-Burris, Dianna Visek, Andy Wolf, Esq.



LIBERTARIAN PARTY OF OREGON

MEMORANDUM

TO: M Carling, Chair, National Judicial Committee

FROM: Ian Epstein, Chairperson, Libertarian Party of Oregon

DATE: December 22, 2015

RE: Clarification of Sept. 2015 National Judicial Committee Ruling

The Libertarian Party of Oregon thanks the national Libertarian Party Judicial Committee for its ruling of September 2015. However, National Chair Nicholas Sarwark continues to recognize the coup leaders rather than the legitimately elected officers of the LPO. We request a clarification of your previous ruling, specifically:

1. Is the National Chair in compliance with the ruling of the Judicial Committee?
2. Is the National Chair in compliance with the bylaws of the national Libertarian Party?
3. Is the National Chair in compliance with the decisions and adopted resolutions of the Libertarian National Committee regarding the LPO concerning the Libertarian Party of Oregon?
4. If the National LNC Chair is not in compliance with any of the above, what does the National LNC Chair need to do to comply?
5. Based on your ruling of September 2015, the national party bylaws, the Libertarian Party of Oregon bylaws, the ruling of the Libertarian Party of Oregon's Judicial Committee, and LNC resolutions, who is the current Chairperson of the LPO, PAC number 622?
6. Based on your ruling of September 2015, the national party bylaws, the Libertarian Party of Oregon bylaws, the ruling of the Libertarian Party of Oregon's Judicial Committee, and LNC resolutions,, which are the valid bylaws of the LPO, PAC number 622?

Respectfully,

Ian Epstein, Chairperson
Libertarian Party of Oregon