

Memorandum

To: Members of the Libertarian National Committee
CC: R. Lee Wrights
From: Aaron Starr, Treasurer
Date: 4/21/2009
Re: Additional Information in the matter of R. Lee Wrights

As a courtesy, and in an attempt to be scrupulously fair, I am also copying R. Lee Wrights on this memo, in the event he is aware of any errors with the facts presented here. In particular, if any of the information concerning R. Lee Wrights' giving record is incorrect, he is welcome to provide evidence to correct the record.

I am writing this to you to make you aware of additional information in the matter of R. Lee Wrights. In addition, and more important, I want to make you aware of a violation of the Federal Elections Code that could have landed us in trouble.

First, I should state the relevant bylaws that apply here:

I do not have a copy of our bylaws prior to 2002.

Prior to 2006 our bylaws addressed membership as follows:

ARTICLE 7: MEMBERSHIP

1. Members of the Party shall be those persons who have certified in writing that they oppose the initiation of force to achieve political or social goals.
2. Dues for membership in the Party shall be set by the National Committee.
3. Only members whose national dues are current shall be counted for delegate apportionment, and National Committee representation. Only members whose national dues are current shall be eligible to hold National Party offices or be a candidate for President or Vice President.

In 2006, convention delegates revamped the article on membership dues to read as follows (I've underlined sections for emphasis):

ARTICLE 5: MEMBERSHIP

1. Members of the Party shall be those persons who have certified in writing that they oppose the initiation of force to achieve political or social goals.
2. The National Committee may offer life memberships, and must honor all prior and future life memberships.
3. "Sustaining member" is any Party member who has given at least \$25 to the Party in the prior twelve months, or who is a life member.
4. The National Committee may create other levels of membership and shall determine the contribution or dues levels for such memberships.
5. Higher levels of contribution by or on behalf of a Party member qualify as sustaining member status for any provision of these Bylaws.
6. Only sustaining members shall be counted for delegate apportionment and National Committee representation. Only sustaining members shall be eligible to hold National Party office or be a candidate for President or Vice-President.

As you are all aware, our records show R. Lee Wrights as having paid \$25 to reestablish his sustaining membership on April 8, 2008, several weeks before the convention, making him eligible to be elected by the delegates to an at-large seat of the LNC.

On April 8, 2009 our records showed that R. Lee Wrights' sustaining membership had lapsed, as he had not given \$25 in the previous twelve months. On April 14, 2009 our records show that R. Lee Wrights made a contribution of \$25 to once again reestablish his membership.

I do not know when Bob Sullentrup first became aware of the lapsing of R. Lee Wrights' sustaining membership. However, once R. Lee Wrights became no longer eligible to hold the position, as per Article 5.6 above and Article 8.4, which states "A National Committee member shall be a sustaining member of the Party, and shall not be the candidate of any party except the Party or an affiliate," I believe that Bob Sullentrup, in his role as Secretary, then had no choice but to recognize that the office was now vacant and inform the LNC of the vacancy.

No member of this board has the right to violate the bylaws because it is the contract that the delegates have made with us when we accepted our positions. As Libertarians we all believe in upholding our agreements.

Of course, this requirement to maintain one's sustaining membership applies to all members of the LNC - though not alternates, unless they actually vote in the place of a member - so I have taken the liberty of examining the current status of all members of the LNC, so that each of you may be aware of your situation.

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Due to your overwhelming generosity, our records show that almost every member of the LNC has the status of life member, and as such qualifies as a sustaining member. The remaining members of the LNC are all monthly pledgers. And so as long as that is the case, there is no risk of lapsing. I note that many of the life members are also monthly pledgers, and I want to state my appreciation to each and every one of you willing to continue this personal sacrifice, motivated by your love of the tremendous good we are attempting to accomplish.

A further examination into our records revealed something to me that was not previously known. I was previously under the impression that the last time R. Lee Wrights contributed to the party was April 8, 2008.

It turns out that this is not the case, as you shall soon see.

I asked Robert Kraus to provide me with the giving history of R. Lee Wrights, starting with his first gift to the party in 2000, to see if there was a pattern of lapsing or if this most recent event was a one-time occurrence.

Then after I saw a posting on a blog regarding the current vacancy that questioned whether someone can pay for another individual's sustaining membership, on a hunch, I asked Robert to examine the payments that were received since I became Treasurer in 2006.

What was revealed surprised me.

Here is R. Lee Wrights complete giving history:

02/22/2000 \$25 membership by mail
01/25/2001 \$25 renewal by mail
01/02/2002 \$25 renewal by mail
04/15/2002 \$89 by mail for convention registration
02/24/2003 \$25 renewal by mail
01/26/2005 \$25 renewal by mail
09/26/2006 \$25 renewal by web
04/08/2008 \$25 renewal made in person by Sean Haugh on behalf of Lee
04/14/2009 \$25 renewal by web

I considered the possibility that R. Lee Wrights was contributing national dues to his state affiliate and that perhaps the affiliate may have failed to remit the dues to the national party, but that doesn't seem likely, since the Libertarian Party of North Carolina is not an FEC filing entity in compliance with the Bipartisan Campaign Reform Act of 2002. They would have to use Federal Funds in order to solicit dues for the national party. I also note that LPNC was a participant in the UMP program, so any dues paid by R. Lee Wrights to the national party would result in dues sharing (and presumably membership) with the LPNC.

I'll note that it would be reasonable for someone to ask whether there could be any problems with the records, since it was in late 2004 when we transitioned from Foxpro to Raisers' Edge. Fortunately, the errors that we encountered from that transition were not centered on the giving

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history, but rather the beginning membership join dates attributed to members who joined prior to our records being computerized. We have complete giving histories going back to the later half of 1987, but some members have an earlier beginning membership date. For example, I know that we have Ruth Bennett's complete giving history in our computer going back to 1988, but I also know that she has gifts made prior to that date that are not in the system, so there is some doubt as to the accurate beginning date ascribed to her for when she began her membership in the party. We show it as being 1978. I suspect it is earlier. Another example, my giving history with the party shows a complete donation history going back to 1988, though I gave long before then, but my membership start date shows 1998, ten years later than my earliest computer recorded gift date. To the best of my knowledge and the knowledge of staff, we are not missing any giving history since 1988.

You'll want to pay special attention to the contribution made on April 8, 2008. Note that Sean Haugh wrote a check from his personal bank account and directly or indirectly instructed Susan Dickson, a junior member of staff, to attribute this to R. Lee Wrights' membership, presumably so that his membership would be considered current for the then upcoming convention elections. Susan Dickson states she has no recollection of the event.

As you probably know, LNC policy requires LPHQ employees to stay out of internal LP politics. If Sean Haugh paid R. Lee Wrights' dues and was aware that (a) Wrights was the campaign manager for Mary Ruwart or (b) he might seek a position on the LNC at the convention, or both, one might reasonably ask whether Sean Haugh was improperly involved with internal LP politics. Personally, I think that would be a stretch.

I cannot state whether R. Lee Wrights knew whether Sean Haugh was making a contribution on his behalf. But I do know that they both hail from the same state and that they are close friends.

Attached is a copy of the actual check written by Sean Haugh, dated April 8, 2008, with a memo instructing staff to attribute the check to R. Lee Wrights' membership records. I verified with Robert Kraus that Sean Haugh was working in the office during that week. Sean Haugh was a consultant for us from approximately September 1, 2006 and was put on the payroll beginning mid-September 2007 until his final paycheck in January 2009.

For reasons not clear to me, while the check was written by Sean Haugh, it was recorded in our system as if it was from R. Lee Wrights. I have confirmed that the act of recording Sean Haugh's check as being from R. Lee Wrights was done without the knowledge of upper management currently at LPHQ.

According to Robert Kraus, Sean Haugh was aware of our internal policies. *The FEC Policies and Procedures Manual for the Libertarian National Committee* requires that we return payments that are clearly made from one party in the name of another.

I'll address the FEC implications of the above later in this memo. First, I want to address the bylaws implications.

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Making a contribution to pay for someone else's basic sustaining membership dues is a violation of Article 5.3 of our bylaws.

Article 5.3 states: "'Sustaining member' is any Party member who has given at least \$25 to the Party in the prior twelve months, or who is a life member."

As an interesting aside, though not relevant to the question here since contributions in excess of \$25 are not involved here, Article 5.5 contradicts Article 5.3 in the case of higher levels of contributions (the next higher level is \$100). Article 5.5 states, "Higher levels of contribution by or on behalf of a Party member qualify as sustaining member status for any provision of these Bylaws."

At first, I wondered if perhaps Article 5.5 was invalid because it is a violation of Federal law to accept a contribution in the name of another and RONR p. 10, lines 16-20 states that, "The only limitations upon the rules that such a body can thus adopt might arise from the rules of a parent body (as those of a national society restricting its state or local branches), or from national, state, or local law affecting the particular type of organization."

However, it is possible in our accounting system to accept, record and report for FEC purposes a contribution in the name of person "A," and then link the contribution record to the membership of person "B," at the request of person "A." This is often done in the case of spouses. However, such a practice is risky because it would be very easy for a data entry error to take place (as appears to be the case here).

I'm not certain what the authors had in mind when they drafted Article 5.5 to allow higher levels of contribution by someone other than the member. In addition to our \$25 level our other recognized membership levels are \$100, \$250, \$500, \$1000 and \$5,000.

Perhaps the intent was to prevent someone from making a \$25,000 contribution to the national party and be able to add 1,000 members at \$25 each to the membership roll of a single state affiliate, but they thought that this would be less of an issue if that same person could only, in effect, purchase only 250 members at \$100 each.

What is clear to me is that there is a distinction being made here, where sustaining membership levels above \$25 can be made by another individual other than the member. I personally do not believe making such a distinction in our bylaws is wise, but that's the way it goes.

I recommend that the Bylaws Committee propose repealing Article 5.5 because it administratively puts us at risk of violating the Federal Election Code, contradicts Article 5.3, conflicts with internal policy and adds little or nothing, from what I can see.

Now, addressing the FEC implications:

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As stated earlier, the *FEC Policies and Procedures Manual for the Libertarian National Committee* requires that we return payments that are clearly made from one party in the name of another, as that is a violation of FEC regulations and our negotiated March 21, 2006 dispute resolution with the FEC that we would not violate their rules in the future. This policy was last updated June 2006, most likely in response to our settlement with the FEC.

The specific prohibition on making contributions in the name of another can be found at this link.

(http://edocket.access.gpo.gov/cfr_2009/janqtr/11cfr110.4.htm)

Note that Sec. 110.4 (b) deals with contributions in the name of another.

TITLE 11--FEDERAL ELECTIONS

CHAPTER I--FEDERAL ELECTION COMMISSION

PART 110_CONTRIBUTION AND EXPENDITURE LIMITATIONS AND PROHIBITIONS--
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Sec. 110.4 Contributions in the name of another; cash contributions
(2 U.S.C. 441f, 441g, 432(c)(2)).

(a) [Reserved]

(b) Contributions in the name of another. (1) No person shall--

(i) Make a contribution in the name of another;

(ii) Knowingly permit his or her name to be used to effect that contribution;

(iii) Knowingly help or assist any person in making a contribution in the name of another; or

(iv) Knowingly accept a contribution made by one person in the name of another.

(2) Examples of contributions in the name of another include--

(i) Giving money or anything of value, all or part of which was provided to the contributor by another person (the true contributor) without disclosing the source of money or the thing of value to the recipient candidate or committee at the time the contribution is made, see 11 CFR 110.6; or

(ii) Making a contribution of money or anything of value and attributing as the source of the money or thing of value another person when in fact the contributor is the source.

(c) Cash contributions. (1) With respect to any campaign for nomination for election or election to Federal office, no person shall make contributions to a candidate or political committee of currency of the United States, or of any foreign country, which in the aggregate exceed \$100.

(2) A candidate or committee receiving a cash contribution in excess of \$100 shall promptly return the amount over \$100 to the contributor.

(3) A candidate or committee receiving an anonymous cash contribution in excess of \$50 shall promptly dispose of the amount over \$50. The amount over \$50 may be used for any lawful purpose unrelated to any Federal election, campaign, or candidate.

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There are only a few circumstances where we will record in our accounting system that a payment was made by other than the member. One example is where there is clearly a joint account, such as one might find with married spouses and the other spouse who didn't sign the check is authorizing the gift.

As stated previously, our records were made to show that the payment came from R. Lee Wrights, not Sean Haugh. This is a violation of the Federal Election Code. It seems unlikely to me that Sean Haugh was unaware of the Federal Election Code, since he served as our former political director and used to publish a list of frequently asked questions on the Bipartisan Campaign Reform Act of 2002 (http://libertarianwiki.org/wiki/index.php?title=BCRA_FAQ).

That said, I do want to make abundantly clear that I do not believe that Sean Haugh violated the law, nor do I believe that R. Lee Wrights violated the law. The only way that this would be otherwise would be if either one gave instructions to a member of staff to record the contribution in another person's name. I have no evidence that supports such a position and because I believe Sean Haugh is familiar with campaign finance requirements, I rather doubt that he would have given such instructions, so I do not want to even infer that such an event took place.

Now, let's address the status of R. Lee Wrights' membership over time. Examine his giving history.

R. Lee Wrights' membership lapsed twice during his 2002-2004 term as an at-large representative, once in the middle (January 2, 2003 through February 23, 2003) and again at the end (February 24, 2004 through the end of his term).

Neither R. Lee Wrights, nor anyone else on his behalf, paid his dues during the twelve months leading up to the 2004 convention, when it was believed that he was elected to the position of national Vice Chair for the 2004-2006 term.

While we all had believed that R. Lee Wrights had been elected to the board as the Vice Chair in May 2004, he was not elected Vice Chair because he was clearly not eligible due to his last gift date being February 24, 2003. He next paid his dues on January 26, 2005 and then let his dues lapse again on January 25, 2006, many months before the end of the term. To be scrupulously fair to R. Lee Wrights, I should add that the LNC adopted a "zero dues" model, effective January 1, 2006 -- a proposal opposed by both me and R. Lee Wrights because we thought this violated the bylaws.

I have not researched whether he paid for his own membership in 2005 or if someone else had done so. I'm told that those records are all in storage. I do not know whether R. Lee Wrights knew that he was not eligible at the time of the 2004 convention, but he clearly was not.

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Because R. Lee Wrights was not a dues paying member at the time he ran for the Vice Chair position in May 2004, he was not elected Vice Chair and we did not have a legitimately qualified Vice Chair during that term.

Soon after I learned of the 2008 contribution illegally recorded in the name of R. Lee Wrights, I questioned whether the most recent contribution attributed to R. Lee Wrights on April 14, 2009 was actually from Wrights.

We are particularly at risk of violating the law when someone donates online, as we do not have visibility as to the name, credit card number and home address of the credit card holder. This lack of visibility to this information is a common measure to prevent credit card fraud.

Robert Kraus has since contacted our credit card processing company and confirmed that the most recent contribution on April 14, 2009 was from a card in R. Lee Wrights' name, so I can reasonably conclude that he had reestablished his membership on April 14, 2009 after being lapsed for over three years.

In conclusion, here are the bottom line determinations I have to make on R. Lee Wrights' membership over time, based on this investigation.

I suspect that there will be those who will want to pretend that Article 5.5, which applies only to higher levels of contributions, should also apply to a basic \$25 membership, but that would be a distortion of what the language actually states.

But whether or not one accepts such a point of view, we can definitely conclude the following based on the facts before us:

In each LNC term in which R. Lee Wrights has served, he has failed to maintain eligibility; in at least one case (perhaps two), he was ineligible to serve, yet sought election. (If he knew he was ineligible, then he deliberately violated our Bylaws. If he didn't check to ensure that he was eligible, then he may have been irresponsible.)

* R. Lee Wrights served as an at-large representative during the 2002-2004 LNC term; he failed to maintain eligibility to serve during the term, due to a lapse in his status as a current dues-paying member as of Feb. 24, 2004.

* R. Lee Wrights served as Vice Chair during the 2004-2006 term; he was ineligible to be elected to the position, and waited until nearly eight months into the term before taking action to become eligible.

* R. Lee Wrights served as an at-large representative during part of the 2008-2010 term. Arguably he was ineligible to be elected to the position; in any event, there is no question that his eligibility lapsed as of April 9, 2009.

Addressing the FEC implications, the remedial steps we are taking to deal with the past illegal contribution and prevent future improper contributions are as follows:

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1) Because we cannot legally accept a contribution in the name of another, on the advice of Paula Edwards, our FEC consultant, and with the affirmation of the Chair, I have instructed Robert Kraus to refund the \$25 to Sean Haugh. I have attached a copy of the correspondence, the original check from Sean Haugh, and our refund check.

2) Robert Kraus will be updating the donation pages of our website to require that donors acknowledge that the contribution is being made by them and not with someone else's credit card.

3) We will investigate whether we can get from our credit card processor the names of all cardholders who give to us in the future, to make sure they match with the names attributed to contributors.

4) Robert Kraus will contract with Paula Edwards to come in to the office, review office procedures and give staff a refresher course on campaign finance requirements.

Sincerely submitted,

Aaron Starr
Treasurer
Libertarian National Committee