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IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF CLACKAMAS

TIM REEVES, ERIC SAUB, GREG BURNETT, CARLA PEALER as the LIBERTARIAN PARTY OF OREGON, and DAVID TERRY, M CARLING and RICHARD BURKE as members of the LIBERTARIAN PARTY OF OREGON,

Plaintiffs,

v.

WES WAGNER, an individual, and WES WAGNER, HARRY JOE TABOR, MARK VETANEN, BRUCE KNIGHT, in their corporate capacities as the LIBERTARIAN PARTY OF OREGON,

Defendants.

Case No. CV 12010345

FIRST AMENDED COMPLAINT

(Declaratory Judgment and Injunctive Relief Requested; ORS 65.084 Challenge to Corporate Authority; ORS 65.374 Breach of Corporate Duty)

CLAIM NOT SUBJECT TO MANDATORY ARBITRATION

Plaintiff alleges:

PARTIES

1.

Plaintiffs Tim Reeves and Greg Burnett are duly elected officers of the Libertarian Party of Oregon ("LPO" hereafter) under the duly adopted and ratified bylaws that pre-existed the Wes Wagner group's attempted changes to the bylaws. Plaintiffs Reeves and Burnett are also members of the Libertarian Party of Oregon who have been harmed and affected by having their membership rights abridged, denied and violated.

2.

1 Tim Reeves is a member of the Libertarian Party of Oregon, a resident of Oregon and
2 was elected as Chairman of the Libertarian Party of Oregon on May 21, 2011 at the State
3 Committee meeting. Tim Reeves is the legitimate Chairperson of the Libertarian Party of
4 Oregon under the existing and duly adopted set of bylaws.

5 3.

6 David Terry is a member of the Libertarian Party of Oregon, attended the meeting called
7 by Wes Wagner and held on March 31, 2011 and objected to the unauthorized and improper
8 changes to the bylaws.

9 4.

10 Greg Burnett is a member of the Libertarian Party of Oregon and was elected as the
11 Treasurer of the organization on May 21, 2011. Greg Burnett has not been given control of the
12 assets of the organization by the prior administration controlled by Wes Wagner. Defendant is
13 preventing the LPO from following its proper bylaws and from being directed by the duly
14 elected officers. Eric Saub and Carla Pealer are members, and the Vice Chair and Secretary,
15 respectively of the LPO.

16 5.

17 M Carling and Richard Burke are members of the Libertarian Party of Oregon.

18 6.

19 The Libertarian National Committee (LNC) is a national political organization with state
20 affiliates around the United States. The LNC owns a United States Patent and Trademark Office
21 trademark serial number 75937476, on the words Libertarian Party. The LNC has the legal right
22 to affiliate State organizations and has affiliated the "Libertarian Party of Oregon", and therefore
23 there can be only one official Libertarian Party of Oregon. The Oregon Secretary of State

1 recognizes that there is only one “Libertarian Party of Oregon”. Currently there are two
2 simultaneous sets of bylaws and groups operating in parallel as the Libertarian Party of Oregon.

3 **JURISDICTION AND VENUE**

4 7.

5 Defendant Wes Wagner resides in Clackamas County and wrongfully asserts that he is
6 now the Chairperson of the Libertarian Party of Oregon, and has been taking, and attempting to
7 take, official actions in that capacity including but not limited to, the use of party funds and filing
8 of an entirely new set of corporate bylaws that are invalid and were never properly approved or
9 adopted. As the alleged Chairperson, or corporate President, of the putative leadership group
10 now called the “officers” and other groups, committees such as the “Board of Directors”, and are
11 operating the Libertarian Party of Oregon, recognized by the Secretary of State elections
12 division, under these alternate bylaws, Wes Wagner is the proper individual to be named as
13 corporate Defendant on behalf of the alleged faction of organization, in addition to the
14 Corporation being sued in its own name. Defendants also constituting the “officers” allegedly
15 acting under Wagner have no legitimate claim to the offices they claim they hold. Defendant
16 Wagner insisted that all of his alleged co-officers be named as parties to this lawsuit.

17 **GENERAL ALLEGATIONS**

18 8.

19 Defendant Wes Wagner and the current purported leadership, both the “officers” and the
20 “Board of Directors”, (collectively “Defendants” as the organization itself) of the Libertarian
21 Party of Oregon under him are operating from an invalid set of bylaws that was not properly
22 adopted, and is therefore null and invalid and correspondingly they have no authority to act on
23 behalf of the organization. Defendants were not elected or appointed in accordance with state

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1 law or the party's bylaws and are therefore not executive directors or officers of the organization
2 at all.

3 9.

4 The bylaws of the Libertarian Party of Oregon were last amended and ratified by the
5 organization at their 2009 State Convention in Newport, Oregon on March 14th and 15th of 2009
6 (the "2009 Bylaws" hereafter). A copy of the 2009 Bylaws is attached as Exhibit 1. Article VI
7 Section 1 (B) of those 2009 Bylaws make the State Committee subordinate to the LPO
8 Constitution, the LPO bylaws and the LPO Convention.

9 10.

10 In 2011, Defendant Wes Wagner recognized, operated under, and served as an officer of
11 the organization under the 2009 Bylaws. Defendants have recognized the validity of the 2009
12 Bylaws. Article XVI of the 2009 Bylaws provides the amendment procedures to alter the LPO
13 bylaws. Amendment to the bylaws may only be accomplished at a state convention. Article
14 XVI of the 2009 Bylaws state:

15 **SEC. 1. Advance Notification.** Proposed amendments to this Constitution and Bylaws shall
16 be entered on the agenda of the next annual convention to be held in an odd numbered year
17 unless the State Committee authorizes a special convention to be held sooner for that
18 purpose. The Secretary shall make the texts of such approved amendments available to
19 each LPO member via written or electronic means, as each member prefers, no fewer than
20 forty five days prior to the opening of said convention. [20030607]

19 **SEC. 2. Amendment in Convention.** Any delegate to an annual convention held in an odd
20 numbered year, or to any special convention held to consider amendments, may propose
21 any amendment to this Constitution and Bylaws if such amendment is presented in writing to
22 the Secretary before that convention finishes considering amendments and if at least ten
23 percent of the delegates present request its consideration. [19990606]

21 **SEC. 3. Two Thirds Majority Required.** These Bylaws may be amended by a two-thirds
22 majority vote of all votes cast by registered delegates present at an LPO convention,
23

1 These 2009 Bylaws were incontestably the governing documents in March of 2011 when this
2 dispute arose.

3 11.

4 The 2009 LPO Bylaws govern Conventions in Article XI. Article XI states:

5 **SEC. 1. Notice.** Written or electronic notice shall be provided to each LPO member of at
6 least forty five days of the date of for such conventions shall be provided to each LPO
member.

7 **SEC. 2. Rules.** Convention rules shall be adopted and/or amended at any duly constituted
state convention by a simple majority vote of the delegates attending.

8 **SEC. 3. Delegates.**

9 A. Annual and Special Convention Delegates. All delegates must be an LPO member in
current standing 30 days before any business or special convention. Each delegate present
and properly credentialed is entitled to one vote at that convention. [20071229]

10 B. Nominating Convention Delegates. Any registered Libertarian elector of the State of
Oregon may attend LPO nominating conventions as a voting delegate with one vote.

11 **SEC. 4. Annual Conventions.** The annual convention shall be held on the second full
weekend of March each year

12 **SEC. 5. Nominating Conventions.** The State Committee shall set the time, place, and
13 schedule of events for all nominating conventions.

14 **SEC. 6. Special Conventions.** Special conventions for a specific purpose may be called by
the state committee or the delegates of an annual convention, and no items of business not
15 on the noticed order of business may be considered. The State Committee shall set the time,
place, and schedule of events for all special conventions.

16 **SEC. 7. National Convention Delegates.** All members and alternates of an LPO delegation to
a national convention shall be members of both the LPO and the national Libertarian Party
17 whose dues to both are paid-up at the time of their selection and at the time of the national
convention. [20090314]

18 12.

19 The 2009 Bylaws require the annual convention to be on the second full weekend of
20 March each year.

21 13.

22 The 2009 Bylaws require notice by writing or electronic means forty-five days or more
23 before the convention.

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14.

On March 12, 2011, the LPO convened for their annual convention. The March 12, 2011 meeting was a properly noticed meeting of the LPO. The March 12, 2011 meeting did not achieve a quorum. At this time, then Vice Chair Wes Wagner moved to continue the meeting to May 28th, 2011 in the hopes of achieving a quorum. The motion was approved after being amended to May 21st, 2011. The Minutes of the March 12 meeting show that then Chairperson Jeff Weston explained at that convention that under the 2009 Bylaws that if Mr. Wagner's motion to adjourn until May would pass, that the term of office of the existing officers would end "at the end of the convention in May". The convention then adjourned until May 21, 2011. Shortly after the March 12, 2011 meeting, then Chair Jeff Weston resigned and Wes Wagner assumed the position of Chairperson of the LPO.

15.

Shortly after the March 12, 2011 Convention, then Chairperson Jeff Weston resigned from his position as Chair. Defendant Wes Wagner was at the time in the expiring seat of Vice-Chair and thus automatically took the role of Chairperson. Defendant Wagner found himself in the position of Chairperson, and rather than allow his term in office to end, or run for re-election, Defendant attempted to change the corporate bylaws.

16.

On March 31, 2011, Defendant held what he contends was a meeting of the LPO state committee. The minutes of this meeting confirm it was called, even at that time, a State Committee Meeting – NOT a convention. The March 31, 2011 event was not a properly noticed convention, as would have been required by the 2009 LPO bylaws for any amendment or change to the 2009 LPO bylaws. Article XI of the 2009 Bylaws requires at least 45 days notice before

1 any convention. At this March 31, Wagner meeting, an entirely new set of bylaws was invalidly
2 adopted, and with a mere 5 votes. Then a new slate of officials, called a Board of Directors, was
3 selected under those new bylaws. Immediately after the vote to create new bylaws, a motion was
4 made to create the "Board of Directors". Angela Grover, Richard Skyba, Harry Joe Tabor, Ron
5 Bream, Mark Vetanen, Wes Wagner, Jim Karlock, Joe Shelley and Herb Booth were placed on
6 that purported board of directors by acclamation (collectively the "Wagner Board" or "Board of
7 Directors"). The meeting minutes indicate that thirteen individuals attended. These replacement
8 bylaws significantly alter the membership rights of members of the LPO and the operation of the
9 organization, and even deny some existing members of their membership. The Defendant also
10 purports that Wes Wagner, Harry Joe Tabor, Mark Vetanen, and Bruce Knight are Chair, Vice
11 Chair, Secretary and Treasurer respectively (together with Wagner "the Wagner Officers" or
12 "Officers"). Defendant Wagner, the Wagner Officers, and any other offices or officers under
13 Wagner are all operating in violation of the corporate bylaws, and in breach of their duty to the
14 membership and have no legitimate right to the offices they claim they hold. The Board of
15 Directors positions do not exist under the proper bylaws.

16 17.

17 The 2009 LPO bylaws required a 2/3 vote at a convention to amend or replace the
18 bylaws. Only 13 members are reported to have been present at Defendant's meeting on March 31
19 and quorum for the convention on March 12th was 68 members. At the March 31 meeting, Wes
20 Wagner acknowledged that a 2/3 vote at a convention was required to change the 2009 Bylaws,
21 but said, "you'll never get those 2/3 to give up their royal scepter and actually hand the power
22 back to the members of the state". It was also said by someone at the meeting "we'll have to get
23 50 people in a room and vote on it Or pass my resolution and you only have to have 15

1 people”.

2 18.

3 It is without question that the March 31 meeting was not properly noticed, did not have a
4 quorum and did not in any way function as a convention. The March 31, 2011 meeting could not
5 have changed the 2009 Bylaws, and did not have any legal effect on the 2009 Bylaws. The 2009
6 Bylaws remain in place.

7 19.

8 Disregarding their own bylaws and state law, the Defendant filed the newly created
9 bylaws and reported new Officers to the Oregon Secretary of State in April. This took place a
10 full month before the re-convening of the Convention which Defendant Wagner himself was the
11 maker of the motion to move to extend the meeting.

12 20.

13 Defendant filed or caused to be filed with the Oregon Secretary of State the newly
14 created bylaws, and asserted or implied that the bylaws were legitimate. The Secretary of State
15 accepted the bylaws and assumed the bylaws were legitimate because Defendant Wes Wagner
16 was on their latest list of officers of the LPO at that time.

17 21.

18 On May 21, 2011, the other members of the LPO met for what was voted on and
19 scheduled to be the continuation of their annual convention as voted on and approved at the
20 March 12 convention. None of the individuals from Defendant’s new purported leadership
21 attended this meeting, including Wes Wagner, who was the person that moved to set-over the
22 meeting. Once again, the LPO convention did not achieve quorum. At this time, the LPO
23 members adjourned the convention *sine die*.

1 22.

2 Pursuant to Article V of the 2009 Bylaws the terms of office of all elected officers begins
3 immediately upon the close of the annual convention.

4 23.

5 The 2011 annual convention was closed sine die on May 21, 2011.

6 24.

7 Defendant Wes Wagner's term as Vice-Chair, filling the role of Chairperson, ended on
8 May 21, 2011.

9 25.

10 On May 21, 2011, the remaining state committee members then held a state committee
11 meeting immediately following the convention, as required by Article VI Section 3.1 of the 2009
12 Bylaws of the LPO. The post-convention state committee meeting did occur and did achieve a
13 quorum and voted to elect officers to the vacant officer positions. Only a state committee
14 meeting can meet for the purpose of filling vacant officer positions, as permitted by Article V
15 Section 2 B of the 2009 Bylaws of the LPO. At that May 21 meeting, the LPO state committee
16 elected Tim Reeves as Chairperson, Eric Saub as Vice Chair, Carla Pealer as Secretary, and Greg
17 Burnett as Treasurer. This group is rightfully the current officers entitled to govern the LPO
18 until the next convention or until replaced.

19 26.

20 The March 12 convention was properly noticed and was properly continued to May 21,
21 2011. The May 21 state committee meeting following the convention was properly noticed
22 pursuant to ORS 65.214 (4).

23 27.

1 65.084, ORS 20.105, and ORS 28.100. Should Defendants contest this action, Plaintiffs request
2 this court grant them leave under ORS 28.080 to file for supplemental relief for the organization
3 to seek monetary recovery from the Defendants in their personal capacities.

4 **FIRST CLAIM FOR RELIEF**

5 *(Declaratory Relief)*

6 33.

7 Plaintiffs hereby incorporate and re-allege the allegations in paragraphs 1 to 32.

8 34.

9 ORS 248.011 prohibits the Secretary of State Elections Division, or any other elections
10 official, from getting involved to enforce the rules or bylaws of the LPO. Plaintiffs are without
11 any adequate remedy at law.

12 35.

13 Defendant is operating in violation of the LPO bylaws. The 2009 Bylaws are the valid
14 and currently governing set of bylaws. The group of officers elected on May 21, 2011, led by
15 Plaintiff Tim Reeves is the group of governing officers legitimately entitled to those offices. The
16 March 31, 2011 meeting was not a Convention and did not affect the 2009 Bylaws in any way.

17 36.

18 Plaintiffs are entitled to a declaratory judgment declaring that the 2009 Bylaws are still in
19 force and effect and that the officers elected on May 21, 2011 are the current and rightful officers
20 of the organization. The Wagner Officers do not rightfully hold office.

21 **SECOND CLAIM FOR RELIEF**

22 *(ORS 65.084 Challenge of Corporate Authority)*

23 37.

1 Plaintiffs hereby incorporate and re-allege the allegations in paragraphs 1 to 36.

2 38.

3 Defendant Wagner, the Board of Directors created on March 31, 2011, and the Wagner
4 Officers allegedly empowered by that group, lack legitimate authority or power to act on behalf
5 of the LPO. Defendants should be enjoined from taking any further actions on behalf of the
6 LPO. The set of bylaws from March 31, 2011 and filed with the Secretary of State should be set
7 aside, and Defendants ordered to recognize the officers elected on May 21, 2011, and they
8 should be ordered to inform the Secretary of State Elections Division of said succession of
9 officers. Defendant is in possession, custody and control of assets of the LPO and Plaintiff's
10 Reeves and Burnett are the rightful Chair and Treasurer entitled to possession custody and
11 control of LPO assets.

12 **THIRD CLAIM FOR RELIEF**

13 *(Breach of Duty of an officer/director)*

14 39.

15 Plaintiffs hereby incorporate and re-allege the allegations in paragraphs 1 to 38.

16 40.

17 Wes Wagner, and Defendants breached their duty to follow the corporate bylaws, and act
18 consistent with the direction of the membership.

19

20 **WHEREFORE**, Plaintiffs prays for a judgment in favor of Plaintiffs as follows:

21 **ON PLAINTIFFS' FIRST THROUGH THIRD CLAIMS FOR RELIEF:**

- 22 1. Setting aside and declaring null and void the bylaws created by Defendants on March 31,
23 2011;

- 1 2. Declaring that the 2009 Bylaws remain in full force and effect as governing documents of
2 the Libertarian Party of Oregon;
- 3 3. Declaring that Tim Reeves be recognized as Chairperson of the Libertarian Party of
4 Oregon, and all the officers elected at the May 21, 2011 state committee meeting be
5 recognized as the existing officers for the remainder of the term of office as set by the
6 2009 Bylaws;
- 7 4. Ordering Defendants to assist in completing a full and accurate accounting of all funds
8 expended between March 12, 2011 and the date of this judgment, and to provide that
9 accounting to Plaintiffs within 30 days of this judgment, and authorizing Plaintiffs to
10 request the documents and records they desire under ORCP 36 and 43;
- 11 5. Ordering Defendants to turn over possession and control of all LPO property, tangible
12 and intangible, including websites and passwords to the officers elected on May 21, 2011.
- 13 6. Ordering that the record on this case remain open, granting Plaintiffs leave to convene a
14 meeting of the LPO state committee to allow the rightfully re-constituted corporate body
15 to decide whether it will file an application for supplemental relief, petition for attorney
16 fees, or to seek to enforce the claim for monetary damages against Defendants personally;
- 17 7. Granting Plaintiffs, as the LPO may deem appropriate, leave to file for supplementary
18 relief under ORS 28.080 against Defendants in their individual capacity for misuse of
19 corporate assets if they contest this matter or continue to use corporate assets, in their
20 personal capacities for damages in an amount to be proven at trial;
- 21 8. Authorizing the LPO to reinstate any and all members of the organization whose
22 membership may have lapsed between March 31, 2011 and the date of this judgment due
23 to the invalid bylaws, non-payment of dues, or any other reason the LPO deems adequate

1 to restore members to valid status as if the Defendants' invalid actions had not taken
2 place;

3 9. Issuing a permanent injunction on Wes Wagner, and Defendants from falsely asserting
4 that they are office holders of the LPO, and from asserting that the 2009 Bylaws were
5 changed on March 31, 2011;

6 10. Ordering Wes Wagner barred from seeking elected or appointed office inside the LPO for
7 a period of 3 years; and

8 11. For any other such relief as this court should deem just and equitable.
9

10 DATED this 18 day of April, 2012.

11 Tyler Smith & Associates, P.C.

12 By 

Tyler Smith, OSB# 075287

Attorneys for Plaintiffs

181 N. Grant St. STE 212

Canby, OR 97013

14 Phone: 503-266-5590; Fax: 503-266-5594

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1 **CERTIFICATE OF SERVICE**

2 I HERBY CERTIFY that on the 18th day of April, 2012, I caused a true copy of Plaintiffs'
3 FIRST AMENDED COMPLAINT to be served upon the following named parties or their
4 attorney as indicated below and addressed to the following:

5 James Leuenberger PC
4500 SW Kruse Way, STE 100
6 Lake Oswego, OR 97035
Attorney for Wes Wagner


7 C. Robert Steringer
8 1001 SW Fifth Ave. 16th Fl.
Portland, OR 97204
9 Attorney for Libertarian Party of Oregon

10 Service of process on the two added parties was waived by Plaintiffs, and the Summons and First
Amended Complaint was accepted by Plaintiffs' attorney Tyler Smith.

11 Delivery was done by ___ hand, X first class mail, ___ certified or ___
12 registered mail, return receipt requested with restricted delivery, ___ express mail, ___ e-mail,
13 ___ facsimile.

14
15 DATED this 18 day of April, 2012.

16
17 Tyler Smith & Associates, P.C.

18
19 By 
20 Tyler Smith, OSB# 075287
Nathan Goin, OSB# 114011
Attorneys for Plaintiffs
21 181 N. Grant St. STE 212, Canby, OR 97013
22 Phone: 503-266-5590; Fax: 503-266-5594
23