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March 7, 2012

VIA FIRST CLASS MAIL

Clerk
Clackamas County Circuit Court
807 Main Street
Oregon City, OR 97045

Re: *Tim Reeves, et al v. Libertarian Party of Oregon, et al*
Clackamas County Circuit Court Case No. CV12010345

Dear Clerk:

Enclosed please find the original Rule 21 Motions by Defendant, Libertarian Party of Oregon.
Also enclosed, please find this firm's Check No. 3143 in the amount of \$240.00, representing the first appearance fee.

Thank you for your courtesies.

Sincerely,

Jackie Wilkes
Litigation Paralegal / Legal Assistant

/jw
Encls.

c: All Counsel (w/encl.)
Libertarian Party of Oregon (w/encl.)

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2
3
4 IN THE CIRCUIT COURT OF THE STATE OF OREGON
5 FOR THE COUNTY OF CLACKAMAS
6

7 **TIM REEVES, DAVID TERRY, M**
8 **CARLING, GREG BURNETT, and**
9 **RICHARD BURKE, as Members and**
Officers of the **LIBERTARIAN**
PARTY OF OREGON,

10 Plaintiff,

11 vs.

12 **WES WAGNER, allegedly acting as**
13 **Chairperson of the LIBERTARIAN**
14 **PARTY OF OREGON, and the**
LIBERTARIAN PARTY OF
OREGON,

15 Defendant.
16

Case No. CV 12010345

RULE 21 MOTIONS BY
DEFENDANT, LIBERTARIAN
PARTY OF OREGON

ORAL ARGUMENT
REQUESTED

17 Time required for argument: 20 minutes
18 Telecommunications requested: No
19 Offices more than 25 miles from courthouse: No
20 Court reporting services requested: No

21 Defendant, Libertarian Party of Oregon ("Defendant LPO") is represented
22 by C. Robert Steringer of HARRANG LONG GARY RUDNICK PC, 1001 SW Fifth
23 Avenue, 16th Floor, Portland, Oregon 97204. Defendant, Wes Wagner
24 ("Defendant Wagner") is represented by James E. Leuenberger of JAMES E.
25 LEUENBERGER, P.C., 4500 SW Kruse Way, Suite 100, Lake Oswego, OR 97035.
26 Plaintiffs are represented by Tyler Smith and Nathan Goin of TYLER SMITH &
ASSOCIATES, P.C., 181 N. Grant Street, Suite 212, Canby, OR 97013.

1 **CERTIFICATE OF COMPLIANCE**

2 Pursuant to UTCR 5.010, Defendant LPO hereby certifies that Defendant
3 LPO's counsel conferred with plaintiffs' counsel concerning the issues in dispute
4 and a resolution was not reached.

5 **MOTIONS**

6 **MOTION 1:** Defendant LPO moves for order pursuant to ORCP 21A(8)
7 dismissing plaintiffs' entire complaint because it requests relief that is not
8 provided by Oregon statutes regarding political parties and seeks an
9 unconstitutional entanglement of the state in an intraparty dispute.

10 **MOTION 2:** Defendant LPO moves for order pursuant to ORCP 21A(8)
11 dismissing plaintiffs' claim for a declaratory judgment (First Claim for Relief)
12 because the LPO Bylaws are not subject to examination in a declaratory judgment
13 action and, alternatively, because plaintiffs have failed to make parties all the
14 people they seek to install as officers.

15 **MOTION 3:** Defendant LPO moves for an order pursuant to ORCP
16 21A(8) dismissing plaintiffs' claim for "Challenge of Corporate Authority" under
17 ORS 65.084 (Second Claim for Relief) because that statute is inapplicable to the
18 LPO.

19 **MOTION 4:** In the alternative to Motion 2, Defendant LPO moves for an
20 order pursuant to ORCP 21E striking all of plaintiffs' requests for relief pursuant
21 to ORS 65.084 that are not, in fact, challenges to corporate authority permitted
22 under ORS 65.084. Attached as Exhibit A is a copy of plaintiffs' Complaint
23 showing which provisions should be stricken.

24 **MOTION 5:** Defendant LPO moves for an order pursuant to ORCP 21E
25 striking plaintiffs' claim to an entitlement to attorney fees in paragraph 32 of their
26 Complaint because they have not alleged a legal basis for recovery of such fees.

1 **POINTS AND AUTHORITIES**

2 **I. PRELIMINARY STATEMENT.**

3 As plaintiffs acknowledge in their pleading, the Oregon Secretary of State
4 recognizes Wes Wagner as the Chairperson of the Libertarian Party of Oregon.
5 Plaintiffs ask this Court to wade into an intraparty leadership dispute to unseat Mr.
6 Wagner, as well as other current LPO officers and directors who are not parties to
7 this case, and install plaintiffs' faction in their place. Oregon law does not permit
8 judicial action to achieve the ends sought by plaintiffs. As explained in the
9 paragraphs that follow, each of plaintiffs' claims against Defendant LPO must be
10 dismissed for failure to state a claim upon which relief may be granted.

11 **II. ARGUMENT.**

12 **A. Motion 1: Plaintiffs Seek Relief that is Not Allowed Under**
13 **Oregon Statutes Governing Political Parties and Which Would**
14 **Constitute an Unconstitutional Foray into the Inner Workings of**
a Political Party.

15 In Oregon, political parties are regulated by the Oregon Secretary of State.
16 See ORS chapter 248 (providing for the regulation of political parties). However,
17 the legislature has expressly provided that, "[e]xcept as expressly required by law,
18 the Secretary of State, a county clerk or any other elections official shall not
19 enforce the provisions of ORS 248.005 *or any other rule adopted by a political*
20 *party.*" ORS 248.011 (emphasis added).

21 The policy reflected in ORS 248.011 properly reflects the constitutional
22 prohibition of state interference with the internal affairs of political parties.
23 "Freedom of association * * * encompasses a political party's decisions about the
24 identity of, and the process for electing, its leaders." *Eu v. San Francisco County*
25 *Democratic Cent. Comm.*, 489 US 214, 229, 109 S Ct 1013 (1989). As a result,
26 states may not interfere with the internal affairs of a political party in the absence

1 of a compelling state interest. *Id.* at 231. On the question of whether an intraparty
2 leadership struggle implicates a compelling state interest, the United States
3 Supreme Court is clear: “the State has no interest in ‘protect[ing] the integrity of
4 the Party against the Party itself.’” *Id.* at 232 (quoting *Tashjian v. Republican*
5 *Party of Connecticut*, 479 US 208, 224, 107 S Ct 544 (1986)). Thus, the United
6 States Supreme Court has ruled that intraparty disputes must be resolved by the
7 party’s political processes, rather than the courts. *See O’Brien v. Brown*, 409 US
8 1, 4-5, 92 S Ct 2718 (1972) (reasoning that the party’s “convention is the proper
9 forum for resolving intraparty disputes,” and that “the political processes” should
10 “function free from judicial supervision”); *see also Cousins v. Wigoda*, 419 U.S.
11 477, 95 S. Ct. 541 (1975) (ruling state court injunction unconstitutional because it
12 abridged the associational rights of delegates and violated party’s right to
13 determine the composition of its national convention in accordance with party
14 standards).

15 Plaintiffs’ entire complaint should be dismissed because it is unwarranted
16 under Oregon law and seeks an unconstitutional entanglement of the state in an
17 intraparty dispute.

18 **B. Motion 2: Plaintiffs’ First Claim for Relief Should be Dismissed**
19 **Because the LPO Bylaws are Not Subject to Examination in a**
20 **Declaratory Judgment Action and Because Plaintiffs Have**
21 **Failed to Join as Parties All Persons They Seek to Install as**
22 **Officers in the LPO.**

23 In the alternative to Motion 1, plaintiffs’ claim for declaratory judgment
24 should be dismissed on either of two independently sufficient grounds. First,
25 plaintiffs have failed to allege facts showing that the 2009 LPO Bylaws are a type
26 of writing giving rise to legal rights that can be declared by a circuit court.
Second, plaintiffs have failed to join as parties all the persons they seek to install

1 as LPO officers. They have failed to state a claim upon which may be granted
2 and, accordingly, the claim for declaratory judgment should be dismissed pursuant
3 to ORCP 21A(8).

4 **1. Plaintiffs have not established that the LPO Bylaws grant**
5 **legal rights that can be declared by a court.**

6 Plaintiffs' claim for declaratory judgment fails to state a claim upon which
7 relief may be granted because the LPO Bylaws are not the type of writing that may
8 be examined under Oregon's Uniform Declaratory Judgments Act, ORS 28.010 to
9 28.160. Declaratory judgments are available to declare "rights, status, and other
10 legal relations." ORS 28.010. Thus, in order to state a claim for declaratory
11 judgment, the plaintiff must assert a *legal* right or status to be declared.
12 Declaratory relief is not available for every dispute that might arise between
13 individuals.

14 ORS 28.020 describes the types of disputes over "writings" that may be
15 addressed in a declaratory judgment:

16 **"28.020 Declarations as to writings and laws.** Any
17 person interested under a deed, will, written contract or
18 other writing constituting a contract, or whose rights,
19 status or other legal relations are affected by a
20 constitution, statute, municipal charter, ordinance,
21 contract or franchise may have determined any
22 question of construction or validity arising under any
23 such instrument, constitution, statute, municipal
24 charter, ordinance, contract or franchise and obtain a
25 declaration of rights, status or other legal relations
26 thereunder."

24 In this case, the writing plaintiffs submit as the subject of a declaratory
25 judgment is the Bylaws of the Libertarian Party of Oregon adopted in 2009.
26 Plaintiffs make no allegations in their Complaint that would allow this Court to

1 determine that the 2009 LPO Bylaws are a “writing constituting a contract,” which
2 would give rise to legal rights or status that may be declared by a court. Although
3 Oregon courts have found corporate bylaws to constitute contracts between
4 shareholders in some instances,¹ the LPO Bylaws clearly are of a different nature
5 in that they were adopted as organizational rules for a voluntary, unincorporated
6 association.

7 **2. Plaintiffs failed to join as parties two individuals whom**
8 **they seek to install as officers in the LPO.**

9 “When declaratory relief is sought, all persons shall be made parties who
10 have or claim any interest which would be affected by the declaration, and no
11 declaration shall prejudice the rights of persons not parties to the proceeding.”
12 ORS 28.110. Failing to join a party with an affected interest deprives this Court
13 the authority to enter judgment that is binding on that party, and requires dismissal
14 of the action. *See N. Pac. Ins. Co. v. Switzler*, 143 Or. App. 223, 237, 924 P.2d
15 839, 848 (1996) (ruling that ORS 28.110 requires joinder of all parties with
16 affected interests as a jurisdictional prerequisite and requiring dismissal of action
17 where a party with an affected interest had not been joined).

18 Plaintiffs have not made parties all persons with an interest in the
19 declaration they seek. In plaintiffs’ First Claim for Relief, they seek a declaration
20 “that the officers elected on May 21, 2011 are the current and rightful officers of
21 the [LPO].” Complaint ¶ 36. Plaintiffs allege in their complaint that the people
22 elected on May 21, 2011, were “Tim Reeves as Chairperson, Eric Saub as Vice
23

24 ¹ *See, e.g., State ex rel. Brewster v. Ostrander*, 212 Or 177, 189, 318 P2d 284
25 (1957) (quoting *McConnell v. Owyhee Ditch Co.*, 132 Or. 128, 132, 283 P. 755
26 (1930)) (“a by-law does operate as a contract between the corporation and its
members”).

1 Chair, Carla Pealer as Secretary, and Greg Burnett as Treasurer.” Complaint ¶ 25.
2 Although they seek a declaration that Eric Saub and Carla Pealer are officers,
3 those people are not named as parties. Therefore, under ORS 28.110, plaintiffs’
4 claim for declaratory judgment must be dismissed.

5 **C. Motion 3: ORS 65.084, the Basis for Plaintiffs’ Second Claim**
6 **for Relief, is Inapplicable to the LPO.**

7 Plaintiffs’ Second Claim for Relief is based on the erroneous premise that
8 “[s]tate political parties are deemed nonprofit corporations by statute in ORS
9 248.004.” Complaint ¶ 28. In fact, ORS 248.004 is much more limited, providing
10 that political parties have the powers granted to nonprofit corporations under ORS
11 65.077 and are treated as nonprofit corporations for purposes of “contractual, tort

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1 or other liability.” ORS 248.004(1) and (2).² Officers, employees and governing
2 body members of a political party are treated as officers, employees and directors
3 of nonprofit corporations for purposes of liability. ORS 248.004(3) and (4).
4 Nothing in ORS chapter 248 provides that all provisions of the ORS chapter 65,

5
6 ² ORS 248.004 provides as follows, in its entirety:

7 “(1) A minor political party or a major political party
8 shall have all the powers granted to a nonprofit
9 corporation under ORS 65.077.

10 “(2) A major or minor political party shall be treated
11 for purposes of contractual, tort or other liability as a
12 nonprofit corporation.

13 “(3) Officers and employees of a major or minor
14 political party, including officers and employees of
15 local subdivisions of the parties, shall be treated as
16 officers and employees of nonprofit corporations for
17 liability for all matters relating to the political party.

18 “(4) Any member of a governing body of a major or
19 minor political party, including local subdivisions of
20 the parties, shall be treated as directors of nonprofit
21 corporations for liability for all matters relating to the
22 political party. If the bylaws of a party designate a
23 central committee, such as a state, county or
24 congressional district central committee, as the
25 governing body of the party, then the members of the
26 central committee shall be directors of the party for
purposes of this section.

“(5) Notwithstanding ORS 65.157, creditors of a major
or minor political party may not proceed against
members of the political parties for liabilities members
owe to the parties arising from their party membership.

“(6) This section does not affect the liability of
political committee directors, treasurers and candidates
as provided in ORS chapter 260.”

1 the Oregon Nonprofit Corporation Act, apply to political parties. And nothing in
2 ORS chapter 248 provides that ORS 65.084 is applicable to political parties.

3 ORS 65.084 permits a member of a nonprofit corporation to challenge a
4 “corporation’s power to act.” By its terms, the statute relates to the validity of
5 corporate action, not a corporation’s liability to others. Thus, plaintiffs cannot use
6 ORS 248.004, which makes political parties liable to third parties on the same
7 terms as nonprofit corporations, as a basis for invoking ORS 65.084. Therefore,
8 plaintiffs’ claim pursuant to ORS 65.084 should be dismissed.

9 **D. Motion 4: If Plaintiffs’ Claim Under ORS 65.084 is Not**
10 **Dismissed in its Entirety, the Court Should Strike All Requests**
11 **for Relief that are Not Permitted Under ORS 65.084.**

12 The court may strike any sham, frivolous, or irrelevant pleading pursuant to
13 ORCP 21E. A legally insufficient allegation is in effect a nullity and may be
14 stricken as either frivolous or irrelevant. *Lane v. Maass*, 309 Or 671, 676, 790 P2d
15 1137 (1990), *quoting Davis v. Tyee Industries, Inc.* 295 Or 467, 482 n14, 668 P2d
16 1186 (1983).

17 As argued in connection with Motion 2, plaintiffs’ Second Claim for Relief
18 pursuant to ORS 65.084 should be dismissed because that statute is inapplicable to
19 the LPO. If the Court does not grant that motion, Defendant LPO respectfully
20 requests that the Court strike from the Complaint all relief requested pursuant to

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1 ORS 65.084 that is not in fact provided in ORS 65.084.³ Specifically, the Court
2 should strike any request for relief that is not a challenge to the LPO's "power to
3 act," which includes plaintiffs' demands that:

- 4 • "[T]he Wagner Officers and the Wagner Board of Directors [should be]
5 ordered to recognize the officers elected on May 21, 2011, and the
6 should be ordered to inform the Secretary of State Elections Division of
7 said succession of officers"; and
- 8 • "Defendant is in possession, custody and control of assets of the LPO
9 and Plaintiff's [sic] Reeves and Burnett are the rightful Chair and
10 Treasurer entitled to possession[,] custody and control of LPO assets."

11
12
13 ³ ORS 65.084 provides as follows, in relevant part:

14 " (1) Except as provided in subsection (2) of this
15 section, the validity of corporate action may not be
16 challenged on the ground that the corporation lacks or
lacked power to act.

17 " (2) A corporation's power to act may be
18 challenged:

19 " (a) In a proceeding by a member or members, a
20 director or the Attorney General against the
corporation to enjoin the act;

21 * * *

22 " (3) In a proceeding under subsection (2)(a) of this
23 section to enjoin an unauthorized corporate act, the
24 court may enjoin or set aside the act, if equitable and if
25 all affected persons are parties to the proceeding, and
26 may award damages for loss other than anticipated
profits suffered by the corporation or another party
because of enjoining the unauthorized act."

1 Complaint ¶ 38. The material that should be stricken is identified in Exhibit A to
2 these motions.

3 **E. Motion 5: Plaintiffs' Demand for Attorney Fees Should be**
4 **Stricken.**

5 Under ORCP 68, a party seeking attorney fees must "allege the facts,
6 statute or rule that provides a basis for the award of such fees in a pleading filed
7 by that party." ORCP 68C(2)(a). Plaintiffs allege a right to attorney fees
8 "pursuant to ORS 65.084, ORS 20.105, and ORS 28.100." Complaint ¶ 32.
9 Neither ORS 65.084 nor ORS 28.100 provides a right to recover attorney fees.
10 ORS 20.105 provides a right to recover attorney fees only "upon a finding by the
11 court that the party willfully disobeyed a court order or that there was no
12 objectively reasonable basis for asserting the claim, defense or ground for appeal."
13 There is no such finding by the Court in this case. In fact, no defense had been
14 raised at the time the complaint was filed, making plaintiffs' pleading of that
15 ground for attorney fees doubly baseless. Accordingly, Defendant LPO
16 respectfully requests that the Court strike plaintiffs' demand for attorney fees, as
17 specifically indicated in Exhibit A to these motions.

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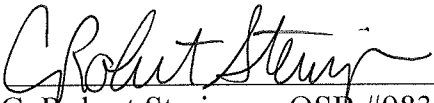
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1 **III. CONCLUSION.**

2 Plaintiffs' claims against Defendant LPO should be dismissed because they
3 seek relief that cannot be granted. Alternatively, Defendant LPO requests that the
4 Court strike those portions of the Complaint seeking relief that is unauthorized by
5 law.

6 DATED this 7th day of March, 2012.

7 HARRANG LONG GARY RUDNICK P.C.

8
9 By: 
10 C. Robert Steringer, OSB #983514
11 bob.steringer@harrang.com
12 Telephone: 503.242.0000
13 Facsimile: 503.241.1458

14 Of Attorneys for Defendant Libertarian
15 Party of Oregon

16 Trial Attorney: C. Robert Steringer
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IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF CLACKAMAS

**TIM REEVES, DAVID TERRY, M
CARLING, GREG BURNETT, and
RICHARD BURKE, as Members and Officers
of the LIBERTARIAN PARTY OF
OREGON**

Plaintiffs,

v.

**WES WAGNER, allegedly acting as
Chairperson of the LIBERTARIAN PARTY
OF OREGON, and the LIBERTARIAN
PARTY OF OREGON,**

Defendants.

Case No. CV

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.

Tim Reeves is a member of the Libertarian Party of Oregon, a resident of Oregon and

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

4 3.

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

8 4.

9 Greg Burnett is a member of the Libertarian Party of Oregon and was elected as the
10 Treasurer of the organization on May 21, 2011. Greg Burnett has not been given control of the
11 assets of the organization by the prior administration controlled by Wes Wagner. Defendant is
12 preventing the LPO from following its proper bylaws and from being directed by the duly
13 elected officers.

14 5.

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

16 6.

17 The Libertarian National Committee (LNC) is a national political organization with state
18 affiliates around the United States. The LNC owns a United States Patent and Trademark Office
19 trademark serial number 75937476, on the words Libertarian Party. The LNC has the legal right
20 to affiliate State organizations and has affiliated the "Libertarian Party of Oregon", and therefore
21 there can be only one official Libertarian Party of Oregon. The Oregon Secretary of State
22 recognizes that there is only one "Libertarian Party of Oregon". Currently there are two
23 simultaneous sets of bylaws and groups operating in parallel as the Libertarian Party of Oregon.

Page 2

COMPLAINT

TYLER SMITH & ASSOCIATES, P.C.
181 N. Grant St. STE 212, Canby, Oregon 97013
503-266-5590, Fax 503-266-5594

EXHIBIT A
PAGE 2 OF 14

1 (the "2009 Bylaws" hereafter). A copy of the 2009 Bylaws is attached as Exhibit 1. Article VI
2 Section 1 (B) of those 2009 Bylaws make the State Committee subordinate to the LPO
3 Constitution, the LPO bylaws and the LPO Convention.

4 10.

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

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

16 **SEC. 2. Amendment in Convention.** Any delegate to an annual convention held in an odd
17 numbered year, or to any special convention held to consider amendments, may propose
18 any amendment to this Constitution and Bylaws if such amendment is presented in writing to
19 the Secretary before that convention finishes considering amendments and if at least ten
20 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

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

26 11.

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

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

1

2

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.

3

SEC. 3. Delegates.

4

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]

5

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.

6

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

7

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

8

9

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 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.

10

11

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 whose dues to both are paid-up at the time of their selection and at the time of the national convention. [20090314]

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12.

14

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

15

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13.

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

18

19

14.

20

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

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22

23

1 amended to May 21st, 2011. The Minutes of the March 12 meeting show that then Chairperson
2 Jeff Weston explained at that convention that under the 2009 Bylaws that if Mr. Wagner's
3 motion to adjourn until May would pass, that the term of office of the existing officers would end
4 "at the end of the convention in May". The convention then adjourned until May 21, 2011.
5 Shortly after the March 12, 2011 meeting, then Chair Jeff Weston resigned and Wes Wagner
6 assumed the position of Chairperson of the LPO.

7 15.

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

13 16.

14 On March 31, 2011, Defendant held what he contends was a meeting of the LPO state
15 committee. The minutes of this meeting confirm it was called, even at that time, a State
16 Committee Meeting – NOT a convention. The March 31, 2011 event was not a properly noticed
17 convention, as would have been required by the 2009 LPO bylaws for any amendment or change
18 to the 2009 LPO bylaws. Article XI of the 2009 Bylaws requires at least 45 days notice before
19 any convention. At this March 31, Wagner meeting, an entirely new set of bylaws was invalidly
20 adopted, and with a mere 5 votes. Then a new slate of officials, called a Board of Directors, was
21 selected under those new bylaws. Immediately after the vote to create new bylaws, a motion was
22 made to create the "Board of Directors". Angela Grover, Richard Skyba, Harry Joe Tabor, Ron
23 Bream, Mark Vetanen, Wes Wagner, Jim Karlock, Joe Shelley and Herb Booth were placed on

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COMPLAINT

TYLER SMITH & ASSOCIATES, P.C.
181 N. Grant St. STE 212, Canby, Oregon 97013
503-266-5590: Fax 503-266-5594

EXHIBIT
PAGE

A
6 OF 14

1 that purported board of directors by acclamation (collectively the "Wagner Board" or "Board of
2 Directors"). The meeting minutes indicate that thirteen individuals attended. These replacement
3 bylaws significantly alter the membership rights of members of the LPO and the operation of the
4 organization, and even deny some existing members of their membership. The Defendant also
5 purports that Wes Wagner, Harry Joe Tabor, Mark Vetanen, and Bruce Knight are Chair, Vice
6 Chair, Secretary and Treasurer respectively (together with Wagner "the Wagner Officers" or
7 "Officers"). Defendant Wagner, the Wagner Officers, and the Wagner Board of Directors are
8 all operating in violation of the corporate bylaws, and in breach of their duty to the membership
9 and have no legitimate right to the offices they claim they hold. The Board of Directors
10 positions do not exist under the proper bylaws.

11 17.

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

20 18.

21 It is without question that the March 31 meeting was not properly noticed, did not have a
22 quorum and did not in any way function as a convention. The March 31, 2011 meeting could not
23 have changed the 2009 Bylaws, and did not have any legal effect on the 2009 Bylaws. The 2009

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COMPLAINT

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EXHIBIT A
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1 Bylaws remain in place.

2 19.

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

7 20.

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

12 21.

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

19 22.

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

22 23.

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

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COMPLAINT

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EXHIBIT A
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1 24.

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

4 25.

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

14 26.

15 The March 12 convention was properly noticed and was properly continued to May 21.
16 2011. The May 21 state committee meeting following the convention was properly noticed
17 pursuant to ORS 65.214 (4).

18 27.

19 The Secretary of State Elections Division has been notified and informed of this
20 illegitimate coup, however has indicated that they cannot or will not get involved in internal
21 political organization disputes. They have stated that a court order is necessary for them to
22 recognize the newly elected officers, until then, their internal policy requires them to recognize
23 the list of officers and bylaws purported by ... the last recognized officer (Wagner), to be in

1 place. Until Defendant Wagner is ordered by a court to give up control, he can continue to assert
2 leadership as long as he desires regardless of what the bylaws state or the membership does.

3 28.

4 State political parties are deemed nonprofit corporations by statute in ORS 248.004.

5 29.

6 Officers of a political party are treated as officers of a nonprofit corporation by statute in
7 ORS 248.004 (3).

8 30.

9 Pursuant to ORS 65.214 nonprofit corporations must give notice of meetings consistent
10 with their bylaws.

11 31.

12 Under ORS 248.004 the members of a political party are treated as the Directors of a
13 nonprofit corporation. Pursuant to ORS Chapter 65, the directors/members of a corporation must
14 alter the corporation's bylaws consistent with state law and the bylaws. The 2009 Bylaws of the
15 LPO were never amended or replaced.

16 32.

17 Plaintiffs are entitled to damages in an amount to be proven at trial if Defendant contests
18 this action against its membership, (attorney fees,) costs and disbursements pursuant to ORS
19 65.084, ORS 20.105, and ORS 28.100. Should Defendants contest this action, Plaintiffs request
20 this court grant them leave under ORS 28.080 to file for supplemental relief for the organization
21 to seek monetary recovery from the Defendants in their personal capacities.

22 **FIRST CLAIM FOR RELIEF**

23 *(Declaratory Relief)*

1 33.

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

3 34.

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

7 35.

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

12 36.

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

16 **SECOND CLAIM FOR RELIEF**

17 *(ORS 65.084 Challenge of Corporate Authority)*

18 37.

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

20 38.

21 Defendant Wagner, the Board of Directors created on March 31, 2011, and the Wagner
22 Officers allegedly empowered by that group, lack legitimate authority or power to act on behalf
23 of the LPO. Defendant and the Board of Directors should be enjoined from taking any further

1 actions on behalf of the LPO. The set of bylaws from March 31, 2011 and filed with the
2 Secretary of State should be set aside, (and Defendant, the Wagner Officers and the Wagner
3 Board of Directors ordered to recognize the officers elected on May 21, 2011, and they should be
4 ordered to inform the Secretary of State Elections Division of said succession of officers.
5 Defendant is in possession, custody and control of assets of the LPO and Plaintiff's Reeves and
6 Burnett are the rightful Chair and Treasurer entitled to possession custody and control of LPO
7 assets.)

8 **THIRD CLAIM FOR RELIEF**

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

10 39.

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

12 40.

13 Wes Wagner, the Wagner Officers, and this new Board of Directors led by Defendant
14 Wagner (collectively Defendants), breached their duty to follow the corporate bylaws, and act
15 consistent with the direction of the membership.

16
17 **WHEREFORE**, Plaintiffs prays for a judgment in favor of Plaintiffs as follows:

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

- 19 1. Setting aside and declaring null and void the bylaws created by Defendants on March 31,
20 2011;
21 2. Declaring that the 2009 Bylaws remain in full force and effect as governing documents of
22 the Libertarian Party of Oregon;
23 3. Declaring that the "Board of Directors" positions created on March 31, 2011 are null and

1 void;

2 4. Declaring that Tim Reeves be recognized as Chairperson of the Libertarian Party of

3 Oregon, and all the officers elected at the May 21, 2011 state committee meeting be

4 recognized as the existing officers for the remainder of the term of office as set by the

5 2009 Bylaws;

6 5. Ordering Defendants, Wes Wagner, the Wagner Officers, and all members of the null

7 Wagner Board of Directors to assist in completing a full and accurate accounting of all

8 funds expended between March 12, 2011 and the date of this judgment, and to provide

9 that 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 6. Ordering Defendants, Wes Wagner the Wagner Officers and all members of the null

12 Wagner Board of Directors to turn over possession and control of all LPO property,

13 tangible and intangible, including websites and passwords to the officers elected on May

14 21, 2011.

15 7. Ordering that the record on this case remain open, granting Plaintiffs leave to convene a

16 meeting of the LPO state committee to allow the rightfully re-constituted corporate body

17 to decide whether it will file an application for supplemental relief, petition for attorney

18 fees, or to seek to enforce the claim for monetary damages against Wes Wagner or his

19 officers or directors personally;

20 8. Granting Plaintiffs leave to file for supplementary relief under ORS 28.080 against

21 Defendants in their individual capacity for misuse of corporate assets if they contest this

22 matter or continue to use corporate assets, including Defendant Wagner, the Wagner

23 Officers, or the Wagner Board of Directors as the LPO may deem appropriate in their

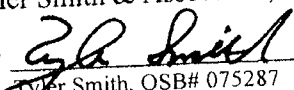
- 1 personal capacities for damages in an amount to be proven at trial;
- 2 9. Authorizing the LPO to reinstate any and all members of the organization whose
- 3 membership may have lapsed between March 31, 2011 and the date of this judgment due
- 4 to the invalid bylaws, non-payment of dues, or any other reason the LPO deems adequate
- 5 to restore members to valid status as if the Defendants' invalid actions had not taken
- 6 place;
- 7 10. Issuing a permanent injunction on Wes Wagner, the Wagner Officers, and the Wagner
- 8 Board of Directors personally from falsely asserting that they are office holders of the
- 9 LPO, and from asserting that the 2009 Bylaws were changed on March 31, 2011;
- 10 11. Ordering Wes Wagner barred from seeking elected or appointed office inside the LPO for
- 11 a period of 3 years; and
- 12 12. For any other such relief as this court should deem just and equitable.

13

14 DATED this 16 day of January, 2012.

15 Tyler Smith & Associates, P.C.

16 By


Tyler Smith, OSB# 075287
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CERTIFICATE OF SERVICE

I certify that on March 7, 2012, I served or caused to be served a true and complete copy of the foregoing **RULE 21 MOTIONS BY DEFENDANT LIBERTARIAN PARTY OF OREGON** on the party or parties listed below as follows:

☒ Via First Class Mail, Postage
Prepaid
☐ Via Facsimile
☒ Via Email Transmission

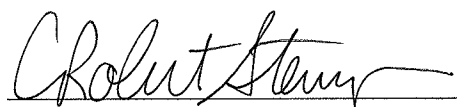
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