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Independent Party in fight over Protack

Members disagree over his nomination at Millsboro pizza parlor gathering

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No law says political parties must hold their nominating conventions in hotel ballrooms or convention centers. But some members of the Independent Party of Delaware say the pizza-parlor meeting that produced their party's gubernatorial nomination last week was much too cozy.

Three of the party's four executive-committee members met at a Grotto Pizza Restaurant in Millsboro and voted to make Republican Mike Protack, 50, of Hockessin, their nominee. The fourth member, Robert Brown, who chairs the party's New Castle County committee, did not attend but said he voted for Protack "in absentia."

The move sparked an immediate and angry response from several members of the party, which has 619 voters on its rolls and has had its share of internal skirmishes in its brief eight-year history.

At issue is whether the party's bylaws, adopted in 2004, stipulate that the executive committee makes the nomination for statewide offices – as party officials claim – or convenes a party-wide nominating convention. Several lawyers say the bylaws appear unclear on that point.

In a bit of irony, the man who wrote those bylaws – Frank Sims – was deposed as state chairman last fall in another nomination dispute. Sims submitted nomination papers for a candidate running for lieutenant governor, but the forms were rejected because Secretary Wolfgang von Baumgart had not signed off on them. State law requires both signatures.

Sims, who is no longer a party member, said the bylaws require an open nominating convention, with notice to party members of the time, date and location so that they can attend and vote.

In 2004, the party held its convention in August at BullDozer's Saloon in Smyrna, owned at the time by Frank Infante, who became the party's gubernatorial nominee that day.

"We had about 14 people show up," said Mike Dore, now a Democrat, who was the Independent Party's nominee for lieutenant governor that year. "We paid about \$350 to publish a small advertisement in *The News Journal*, inviting anyone who was a party member and giving notice of the convention. Each member who attended cast their own ballot. It was very open. That's what we were about. It was built into our bylaws."

Commissioner of Elections Elaine Manlove said her office has no voice in the dispute. The state office assumes the nomination certificate is legitimate, she said, and it will stand unless Protack withdraws or a Chancery Court ruling determines it violates state code.

'Not going to peewee court'

Independent Liz Allen said some party members – including party founder Floyd McDowell – will go to court if party officials don't rescind the action and hold an open nominating convention. McDowell said he had planned to seek the party's nomination during the party convention, which was planned for August.

"We can spend money on attorneys or we can spend money on a convention/annual meeting to resolve our differences under the vote of all the members," Allen wrote in a letter to the party's executive board this week.

Party officials were unmoved.

"If they want court, they have court," said Brown, reached at his Walnut Street Deli in Wilmington. "But we're not going to the peewee court. We're going to the U.S. Supreme Court. If you want this, you've got it."

Von Baumgart, who became chairman in January, said he inherited a party that was "basically in a state of disarray." He said Allen is a disgruntled party member who wanted to chair the party's Sussex County committee. E-mails he got from her had so many grammatical and syntactical errors he couldn't approve her, he said.

"The people who are criticizing are not the ones who would take the time to rewrite the rules and they don't have the ability to do it themselves," said von Baumgart, who lives near Millsboro and said he works as a ghostwriter. "And she has a habit of performing over her rank."

Needed to move quickly

The executive committee decided to nominate Protack now, instead of waiting for an August convention, because his campaign was moving forward and "we had to move a little quicker," von Baumgart said. To do it, the committee suspended its rules on notification of other party members.

"We had the power to do that and we did it," he said. "We wanted to field a strong gubernatorial candidate early enough in the game. The late campaigning doesn't work."

The committee decided that McDowell was physically weakened by cancer treatments and would not be an appropriate nominee, he said.

"Our nomination is legal as it stands," von Baumgart said.

McDowell, 81, of Bear, said his physician has proclaimed him fit to run for office. He had hoped to be the party's nominee, and hoped to nominate Ralph Nader for president, too.

"Delaware has just about the lowest political culture in the civilized world," McDowell said. "For us to let a group of folks in a stealth, fly-by-night way take away what we've developed and planned, it's worth fighting for. I'll do anything I can to reverse this. Wolfgang is putting meringue on top of bull dung."

Von Baumgart said he would rather work on the party's other business than fight battles with a handful of disgruntled party members.

\$24 in their treasury

"I inherited a Web site I can't get access to," he said. "I inherited a treasury with \$24 in it. People are yelling that they haven't gotten their postcards in the mail – do they expect me to drain my bank account? I'm spending 35-40 hours a week trying to get this party straight. Do I have to lose money, too?"

Wilmington lawyer Tyler Nixon, a Republican who ran unsuccessfully for state senate with the endorsement of the Independent Party in 2006, called on Protack to withdraw his candidacy as a demonstration of his commitment to good government and a transparent process.

"I think Protack is poaching the nomination from the founder," Nixon said.

But Protack, who said he stopped by the executive committee's meeting after their vote last week,

has no plans to do so.

"I never tried to subjugate their process whatsoever," Protack said. "It's the way their bylaws are written. It was considered their nominating convention for statewide office. ... The process was delineated by the people and I complied with the rules as stated."

Making their own rules

Election law expert James Gardner of the University at Buffalo Law School said as long as state regulations are not broken, political parties can establish their own rules for nominations.

"There's nothing stopping members of a political party from deciding among themselves that a party's nominee will be chosen annually by three people over a mushroom pie," Gardner said. "But most states do regulate the way parties choose their nominees. Minor parties, though, often have more leeway. The question is whether the party's internal definition of a convention satisfies state law."

Gardner said that without reviewing the matter in detail, he couldn't say what is likely to happen.

"If I were a betting man, though," he said, "I'd bet against it being legitimate."

The Independent Party nomination gives Protack a slot on the general election ballot no matter what happens in the Republican primary, where he faces the GOP's endorsed candidate – retired Superior Court Judge Bill Lee.

That's what candidates must do if they can't get a major party's nomination, said Tom Ross, chairman of the state Republican Committee.

"We had a process where any Republican in the state could be nominated," Ross said. "Bill Lee was drafted and selected in a very public, open process. It gives people an indication of how he would govern, versus other parties in the state. I feel bad for well-meaning members of the Independent Party who worked hard for transparency and good government. For them to be shut out of their own party's process really is egregious."
