SUMMARY PAGE OF LIBERTARIAN PARTY JUDICIAL COMMITTEE RULING
in the matter of:
APPEAL OF CARYN ANN HARLOS' SUSPENSION FROM THE POSITION OF SECRETARY

Date Issued: November 13, 2021
Appellant: Caryn Ann Harlos
Respondents: 12 members and alternates of the Libertarian National Committee (LNC)

Background:

- On September 5, 2021, the LNC voted to suspend Caryn Ann Harlos from her position as secretary of the Libertarian Party and of the LNC as its board.
- On September 10, 2021, Caryn Ann Harlos filed an appeal of her suspension with the Judicial Committee pursuant to Libertarian Party Bylaw Article 6.7.
- The Judicial Committee held a hearing on October 17, 2021 and subsequently considered all the arguments.
- On November 3, 2021 the Judicial Committee members voted as shown below.
- Judicial Committee members have chosen to author or co-sign the attached written statements regarding the vote.

Ruling:

Libertarian Party Bylaw Article 6.7 gives two options for this Judicial Committee ruling, "The Judicial Committee shall either affirm the National Committee's suspension of the officer or order the officer's reinstatement within 30 days of the hearing."

Voting to affirm the suspension: Mattson, Moulton, Supreme, Turney

Voting to order reinstatement: Robinson, Ruwart

Abstaining: Arnold

With a vote total of 4-2, the Judicial Committee has affirmed the suspension of Caryn Ann Harlos.

Effect:

Bylaw Article 6.7 continues, "At such time as the suspension is final, the office in question shall be deemed vacant." Therefore the office of Libertarian Party/LNC secretary is vacant effective with release of this ruling.

Libertarian Party Judicial Committee
Caryn Ann Harlos vs. Libertarian National Committee
Opinion by Dr. Chuck Moulton, Vermin Supreme, and Jim Turney (except Jim Turney dissents from 6.2)

1. Ruling

The Judicial Committee affirms the respondent Libertarian National Committee's suspension of appellant Caryn Ann Harlos.

2. Standard of review

Suspension of officers is within the subject matter jurisdiction of the Judicial Committee according to LP Bylaw 8.2(b). The JC is not a super-LNC which can substitute its judgement for the LNC's. Rather, the JC is an appeals body which gives a degree of deference to the LNC's previously rendered decision. This is evident in LP Bylaw 6.7[1] which states "At the hearing the burden of persuasion shall rest upon the appellant." Appeals bodies generally grant greater deference to issues of fact than issues of law. Factual issues such as whether evidence submitted in support of each cause were sufficient to prove those causes should be reviewed under a clearly erroneous[2] standard. Judicial oversight issues such as whether respondent errored in allowing appellant to have her parliamentarian on the phone during the hearing or errored in forbidding members to participate remotely in place of alternates should be reviewed under an abuse of discretion[3] standard. Legal issues such as whether respondent should have held a trial under Chapter XX of RONR or the proper meaning of the "for cause" standard should be reviewed de novo[4]. The affirmative defense of pretext must be proven by a preponderance of the evidence[5] (more likely than not) burden of proof.

3. RONR Disciplinary Procedure

3.1 Appellant and Respondent Positions

Appellant argued the disciplinary procedures under Chapter XX of RONR should have been followed by respondents. These procedures include an investigation committee, a list of charges and specific wrongdoings, notification by registered mail 30 days in advance, and a trial which includes defense counsel and the right to call witnesses. LP Bylaw 6.7 states in part "The National Committee may, for cause, suspend any officer by a vote of 2/3 of the entire National Committee, excepting the officer that is the subject of the vote who may not participate in that vote." Note whereas the threshold for removal under Chapter XX of RONR is majority; the threshold for suspension under the bylaws is 2/3 of the LNC membership excepting the officer subject to the vote. LP Bylaw 6.7 also states in part "The Judicial Committee shall either affirm the National Committee's suspension of the officer or order the officer's reinstatement." This is a further distinction: Chapter XX of RONR does not provide an avenue of appeal; however, the bylaws do provide such an avenue through the Judicial Committee. Appellant argued these procedural due process protections are additive: Chapter XX of RONR should have been followed except that the voting threshold rises and an avenue of appeal is available. In contrast,

[1] LP Bylaws (July 2020). https://www.lp.org/bylaws-and-convention-rules/
[2] https://en.wikipedia.org/wiki/Standard_of_review#Clearly_erroneous
[3] https://en.wikipedia.org/wiki/Standard_of_review#Abuse_of_discretion
[4] https://en.wikipedia.org/wiki/Standard_of_review#De_novo
[5] https://en.wikipedia.org/wiki/Affirmative_defense#Burden_of_proof

respondent argued the bylaws supersede RONR, which means suspension may be done by motion, obviating any Chapter XX requirements for an investigation, formal charges, notice, and a trial.

3.2 Bylaws are Supreme

Essentially the appellant argued that the bylaws are subservient to RONR. This is incorrect; instead, the reverse is true. LP Bylaw 16 provides "The rules contained in the current edition of Robert's Rules of Order, Newly Revised shall govern the Party in all cases to which they are applicable and in which they are not inconsistent with these bylaws and any special rules of order adopted by the Party." RONR is only applicable filling in the gaps or addressing an ambiguity when the bylaws are not clear – nor can RONR be used to manufacture an ambiguity when none exists from the plain language.

3.3 Analysis

LP Bylaw 6.7 clearly delineates a complete disciplinary procedure for removal (by motion, 2/3 vote, and appeal) which is distinct from and inconsistent with the disciplinary procedure in Chapter XX of RONR (investigation, formal charges, notice, and a trial), rendering Chapter XX inapplicable. Moreover, there is a rule of interpretation which states "If the bylaws authorize certain things specifically, other things of the same class are thereby prohibited." Here the bylaws authorize use of a motion, a 2/3 vote, and an appeal of the removal. Other processes of the same class are thereby disclaimed, including an investigation, formal charges, notice, and a trial. In addition, RONR 56:57 explicitly provides "In professional and some other societies there may be an article on disciplinary procedure; and such an article can be simple or very elaborate." Similarly, RONR 62:16 begins by saying "Except as the bylaws may provide otherwise, any regularly elected officer of a permanent society can be removed from office by the society's assembly as follows". The Libertarian Party bylaws has such an article (which is elaborate) and it does provide otherwise; that article is LP Bylaw 6.7, and it trumps the disciplinary procedure in Chapter XX of RONR. Respondent did not need to follow Chapter XX of RONR disciplinary procedures when it suspended appellant.

4. Alternate vote

4.1 Background

Appellant Harlos argued that the vote relied on a temporary condition because of the participation of alternates: LNC region 2 alternate David Sexton voted in place of LNC region 2 representative Steven Nekhaila and LNC region 4 alternate Tim Ferreira voted in place of LNC region 4 representative Jeffrey Hewitt. The implication of that line of reasoning is alternates should not have been allowed to vote on this motion. An amicus brief by Mr. Hector Roos explicitly argued the vote of Mr. Sexton should not have been allowed. This argument is without merit. Alternates have routinely been used on the Libertarian National Committee throughout the Libertarian Party's 50-year history. These alternates fill in when there is an absence, as in the present case with Mr. Nekhaila leaving the meeting early attending to his pregnant spouse and Mr. Hewitt campaigning for governor of California instead of attending the meeting.

4.2 Analysis

The free substitution of alternates custom on the LNC is outlined in the bylaws with respect to other committees (LP Bylaw 11.5: "Ranked alternates may be named by the appointing bodies to fill any

vacancies or absences in the convention committees.") and convention delegates (LP Bylaw 10.6.b: "Duly selected alternates may be freely substituted for any members of their delegation who are temporarily or permanently absent from the floor [...]", LP Bylaw 10.6.c: "An alternate, upon certification by the Credentials Committee, may function as a delegate whenever a delegate of the same state has not been registered in attendance."). Conceptually, alternates function either to substitute in the case of absences or to facilitate a smooth transition with automatic succession. However, LP Bylaw 7.8 makes no allowance for automatic succession, which would make alternates completely superfluous if substitution were not allowed.

4.3 Remote Voting and Timing

Appellant requested that Mr. Nekhaila be allowed to vote remotely. Respondent LNC did not abuse its discretion in declining to follow that abnormal procedure. Respondent originally scheduled the secretary suspension agenda item at the beginning of new business (Sunday morning), when Mr. Nekhaila was present. Appellant Harlos requested that the agenda item be postponed until the end of the meeting, perhaps so she could participate in most of the meeting even if she was later suspended. That turned out to be a strategic error: by the time the item was taken up one of her likely "nay" votes Mr. Nekhaila had left and been replaced with alternate Mr. Sexton, an "aye" vote. Shifting board membership and absences from the floor for a particular vote are regular occurrences in parliamentary bodies. Neither is sufficient to overturn an otherwise valid vote.

5. Meaning of "for cause"

5.1 Robert's Rules

LP Bylaw 6.7 says "The National Committee may, ***for cause***, suspend any officer by a vote of 2/3 of the entire National Committee […]" [emphasis added]. The words "for cause" are left undefined. Appellant suggested definitions from RONR should be used: RONR 62:16 "neglect of duty in office or misconduct" or RONR 63:24 "conduct that renders [her] unfit for office". These definitions are not controlling because LP Bylaw 6.7 opts out of the disciplinary procedures in Chapter XX of RONR with an alternative procedure. Even if RONR were authoritative on this issue, elsewhere RONR 61:1 provides that "an organization or assembly has the ultimate right to make and enforce its own rules, and to require that its members refrain from conduct injurious to the organization or its purposes.", which suggests a broader definition of cause. RONR 61:3 further says "If there is an article on discipline in the bylaws, it may specify a number of offenses outside meetings for which these penalties can be imposed on a member of the organization. Frequently, such an article provides for their imposition on any member found guilty of conduct described, for example, as 'tending to injure the good name of the organization, disturb its well-being, or hamper it in its work.' In any society, behavior of this nature is a serious offense properly subject to disciplinary action, whether the bylaws make mention of it or not."

5.2 Any Reason

Respondent suggested any reason whatsoever the LNC chooses to identify is sufficient to meet the "for cause" criteria. It is alleged this definition is consistent with labor law; however, the citations included in its brief provide no such support: they instead require violation of the express terms of a contract to satisfy "for cause". Adopting respondent's definition would obliterate any distinction between "at will" employment and "for cause" termination.

5.3 Boards of Directors

LNC vice-chair Moellman suggested a number of definitions from template removal clauses for boards of directors, including "willful misfeasance, bad faith, gross negligence or reckless disregard of the duties involved in the conduct of the office of Director", "(a) willful and continued failure to substantially perform his or her duties as a Director, (b) willful conduct which is significantly injurious to the Company, monetarily or otherwise, (c) conviction for, or guilty plea to, a felony or a crime involving moral turpitude or (d) abuse of illegal drugs or other controlled substances or habitual intoxication", and "a material loss to the Holding Company or one of its affiliates caused by the Outside Director's personal dishonesty, willful misconduct, any breach of fiduciary duty involving personal profit, intentional failure to perform stated duties, or the willful violation of any law, rule or regulation (other than traffic violations or similar offenses) or final cease and desist order". While interesting, these are templates which may be adopted as contract clauses, not rules which govern when no definition is given. Moreover, they seem to be geared toward for-profit companies rather than non-profit or political organizations.

5.4 Employment Law

Appellant argued employment law fits "for cause" into several categories: "Neglect of Duty, Direct Dishonesty to Employer, Theft from Employer, Fraud to Employer, Sexual Harassment, Assault of Co-Worker, Off-Duty Criminal Conduct, Incompetence After Warning". However, the source website for that list (RavenLaw[6]) made no claim it was exhaustive or authoritative. It further defined "just cause" (equivalent to "for cause") as "situations in which you have breached your terms of employment either through misconduct, disobedience, or incompetence".

Other employment law websites suggest the following definitions: TheHartford[7] has categories including "Incompetence, Insubordination, Attendance issues, Theft, Sexual harassment, Physical violence or threats" which in general are "impediments to the proper functioning of your business"; TheBalanceCareers[8] says "for cause" is triggered by actions or interactions which "are so egregious that they require employment termination" or "any actions that an employer considers to be grave misconduct" including categories such as "Violation of the company code of conduct or ethics policy, Failure to follow company policy, Breach of contract, Violence or threatened violence, Threats or threatening behavior to a colleague or customer, Stealing company money or property, Lying, Falsifying records, Extreme insubordination, Harassment, Failing alcohol or drug test, A conviction for some crimes, Watching pornography online, Providing false information on a job application"; jdsupra[9] says "just cause" is "a substantial reason that provided a proper and legally sufficient reason for termination"; duhaime[10] provides this definition among others: "a just cause reason for termination is not trivial, arbitrary or capricious, unrelated to business needs or goals, or pretextual." All of the literature strongly recommends specifying the definition of "for cause" in a written contract or the bylaws.

[6] RavenLaw. https://ravenlaw.com/blog/just-cause-termination/
[7] TheHartford. https://www.thehartford.com/business-insurance/strategy/employee-termination/valid-reasons
[8] TheBalanceCareers. https://www.thebalancecareers.com/termination-for-cause-1918274
[9] Jdsupra. https://www.jdsupra.com/legalnews/what-is-termination-for-cause-35437/
[10] Duhaime. https://www.duhaime.org/Legal-Dictionary/Term/JustCause

5.5 Adopting a Definition

There seems to be no perfect or authoritative definition of "for cause". For the purposes of this analysis, an appropriate "for cause" standard that seems to fit the character of the organization best is "conduct injurious to the organization or its purposes" (from RONR 61:1). This includes categories such as "breach of fiduciary duty involving personal profit", "harassment", "grave violation of policy", and "threats to colleagues" (other categories would be included in a thorough definition, but these are the categories possibly on point to the current case). These categories appear frequently in various definitions cited above and seem to fall under the umbrella of "conduct injurious to the organization or its purposes" as well as being "substantial reasons" and "egregious". The sufficiency of these causes could be overcome by evidence they were pretextual, covering up a real reason which is insufficient (such as "we don't like her") or discriminatory (gender, racial, orientation, or ideological).

5.6 Harassment

It bears mentioning that "sexual harassment" is almost always listed as a category in various "for cause" definitions in an employment context, whereas the broader "harassment" is much less frequently mentioned. Relatedly, "hostile work environment" (an overarching accusation from respondent) is a legal term of art which generally requires that the victim be a member of a protected class. However, our platform notes "Libertarians reject the notion that groups have inherent rights." (LP Platform plank 1.0) and "Sexual orientation, preference, gender, or gender identity should have no impact on the government's treatment of individuals" (LP Platform plank 1.4). By rejecting group rights, libertarian philosophy focuses on the morality of the underlying action rather than the group identity of the victim. Therefore, it would make little sense for libertarians to hold sexual harassment as ethically problematic while treating other types of harassment as benign; either all types of harassment ought to be verboten or all ought to be tolerated. The Harassment and Offensive Behavior Prohibition removes all doubt for our organization: harassment is injurious to the organization.

6. Bill of particulars

Respondent Libertarian National Committee presented a bill of particulars[11] listing causes supported by evidence in appendices. These causes boil down to the following:

1. harassment, threats to colleagues - a long term pattern of behavior detrimental to the party and its operations and purposes
2. breach of fiduciary duty involving personal profit - attempting to monetize her position with frequent requests for contributions which feed on controversy
3. grave violation of policy - Social Media Policy
4. grave violation of policy - Conflict of Interest
5. grave violation of policy - Harassment and Offensive Behavior Prohibition
6. grave violation of policy - Non-Aggression Principle

[11] Bill of Particulars in support of removing the secretary.
https://docs.google.com/document/d/14x8kb8c2MWVu9Moo03e_qyKUDrHpU-WoRktapVphXjQ/edit#

6.1. harassment, threats to colleagues - a long term pattern of behavior detrimental to the party and its operations and purposes

Respondent's bill of particulars state "Ms. Harlos has engaged in a long-term pattern of behavior, both in official communication and via her monetized social media and YouTube platforms, which is detrimental to the party and its operations and purposes. These actions by Ms. Harlos have resulted in members of the LNC being unable to engage in respectful and professional public discussion before the body, making the committee dysfunctional for fear of bullying, harassment, and inaccurate characterizations to discredit and disrupt the committee's work. This pattern of behavior has been furthermore combined with the ethically objectionable." This boils down to allegations of harassment and threats, both of which fall within the meaning of "for cause". Respondent alleges this is "detrimental to the party and its operations and purposes" which fits the adopted definition of "conduct injurious to the organization or its purposes".

Appellant highlighted various examples of other LNC members engaging in behaviors which she alleges were similar in character to this charge against her, then questioned why she was punished while others were not. However, respondent clarified the problem was not isolated violations, but rather a long-term pattern of repeatedly engaging in such conduct. A super-majority of LNC members concluded that appellant's behavior merited exercising its discretion to discipline her, while the behavior of others did not merit such discipline.

Respondent submitted evidence in support of its allegation, while appellant submitted evidence rebutting the allegation. Because the Judicial Committee is deferential to respondent on factual matters, it reviews respondent's decision on sufficiency of the evidence under a clearly erroneous standard. There was not clear error.

6.2. breach of fiduciary duty involving personal profit - attempting to monetize her position with frequent requests for contributions which feed on controversy

Respondent's bill of particulars state "Ms. Harlos's practice, as an officer of the party, of attempting to monetize her position with frequent requests for contributions based on her status as an officer and in support of her attacks on the other members of the LNC are unethical." This boils down to an allegation of "breach of fiduciary duty involving personal profit", which falls within the meaning of "for cause". It however warrants further discussion.

Appellant is alleged to engage in four behaviors which combine to present a breach of fiduciary duty. Any three of them alone would not rise to that level. She is alleged to have a) as an officer of the party, b) monetized her position, c) for personal benefit, d) feeding on controversy. Respondent conceded in oral arguments it would not have been a problem if appellant simply raised money using her position which was then used to fund her LNC expenses such as travel or hotel cost for quarterly meetings. In this case money was raised for ordinary personal living expenses. Appellant increases her income the more controversy comes to the party, which drives traffic and donations to her monetized social media. This is a case of misaligned incentives: said controversy is good for appellant, yet bad for the LP – to which she has a fiduciary duty.

Respondent submitted evidence in support of its allegation, while appellant submitted evidence rebutting the allegation. Because the Judicial Committee is deferential to respondent on factual

matters, it reviews respondent's decision on sufficiency of the evidence under a clearly erroneous standard. There was not clear error.

6.3. grave violation of policy - Social Media Policy

Respondent's bill of particulars state "These actions and behavior by Ms. Harlos are violations of the following Sections of the LNC Policy Manual: Section 5.01 Subsection I (Social Media Policy Page 68)". This social media policy[12] states in part C (public comments): "Libertarian Party employees or qualified volunteers may comment on public issues but must not engage in any activity or speak publicly where this could be perceived as an official act or representation (unless authorized to do so). Employees must not jeopardize the perception of the Libertarian Party in the performance of their duties through making public comments or entering into public debate regarding Libertarian Party policies. Libertarian Party employees must not use their position in the party to lend weight to the public expression of their personal opinions." It further states in part I: "All employees and qualified volunteers are required to comply with the Standards of Conduct as a condition of their employment or extended volunteer capabilities." However, nothing in this policy manual or in evidence suggests appellant Harlos is an "employee" or a "qualified volunteer". Even if appellant was a "qualified volunteer", the remedy for breach of this social media policy would be her dismissal as a "qualified volunteer", not removal as a LNC officer. This is not actually a "violation of policy" (let alone a "grave violation of policy"), and therefore does not fall within the meaning of "for cause".

Respondent submitted evidence in support of its allegation, while appellant submitted evidence rebutting the allegation. Review of evidence is moot because this is not a valid cause.

6.4. grave violation of policy - Conflict of Interest

Respondent's bill of particulars state "These actions and behavior by Ms. Harlos are violations of the following Sections of the LNC Policy Manual: Section 2.01 Subsection 2 (Conflict of Interest Page 23)". This conflict-of-interest policy[13] states in part "No LNC member, Party officer, or employee shall: […] (b) use information gained in the discharge of Party duties to the disadvantage of the Party." The problem is not a potential conflict of interest, which simply must be declared to the LNC and listed on the registry that the secretary maintains. Rather, the allegation is there is an actual conflict of interest by using information gained as fiduciary to the detriment of the party, fanning the flames of controversy. This boils down to an allegation of "grave violation of policy", which falls within the meaning of "for cause".

Respondent submitted evidence in support of its allegation, while appellant submitted evidence rebutting the allegation. Because the Judicial Committee is deferential to respondent on factual matters, it reviews respondent's decision on sufficiency of the evidence under a clearly erroneous standard. There was not clear error.

[12] LNC Policy Manual (June 6, 2021). https://www.lp.org/wp-content/uploads/2021/08/LNC-Policy-Manual-Adopted-thru-2021-06-06.pdf

[13] LNC Policy Manual (June 6, 2021). https://www.lp.org/wp-content/uploads/2021/08/LNC-Policy-Manual-Adopted-thru-2021-06-06.pdf

6.5. grave violation of policy - Harassment and Offensive Behavior Prohibition

Respondent's bill of particulars state "These actions and behavior by Ms. Harlos are violations of the following Sections of the LNC Policy Manual: Section 2.01 Subsection 5 (Harassment and Offensive Behavior Prohibition Page 25)". This allegation is related to #1 (harassment, threats to colleagues - a long term pattern of behavior detrimental to the party and its operations and purposes). The policy manual[14] section explicitly supports "for cause" by listing a remedy: "Violations of this policy may result in disciplinary action against the perpetrator." It explicitly applies to LNC members: "Violation of this expectation by members of the LNC, whether towards other LNC Members or LPHQ staff, is therefore especially egregious." It clarifies what constitutes harassment: "LNC members and staff members must exercise their own good judgment to avoid any conduct that may be perceived by others as harassment. The following conduct could constitute harassment: unwanted physical contact; racial or sexual epithets; derogatory slurs; off-color jokes; sexual innuendoes; unwelcome comments about a person's body; propositions; leering; unwanted prying into a person's private life; graphic discussions about sexual matters, suggestive behavior, sounds, gestures, or objects; threats; derogatory posters, pictures, cartoons, or drawings". The aforementioned list is not exhaustive. This boils down to an allegation of "grave violation of policy", which falls within the meaning of "for cause".

Respondent submitted evidence in support of its allegation, while appellant submitted evidence rebutting the allegation. Because the Judicial Committee is deferential to respondent on factual matters, it reviews respondent's decision on sufficiency of the evidence under a clearly erroneous standard. There was not clear error.

6.6. grave violation of policy - Non-Aggression Principle

6.6.1. NAP in the Bylaws

Respondent's bill of particulars state "Furthermore, Ms. Harlos's public slander and harassment of the LNC and LP Members to achieve her political and social goals are in clear violation of the Non-Aggression Principle. All individuals must sign and adhere to the Non-Aggression Principle in order to be a member of Libertarian Party." This non-aggression principle is elaborated in LP Bylaw 4.1: "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."

6.6.2. Violent Rebellion

Appellant argued the non-aggression principle does not apply to speech, but rather applies to "physical force or fraud or inciting violent rebellion against the government". In support of this position, she cites a letter from party founder David Nolan[15] which states in part "Interestingly, most people in the LP do not know why it was originally placed on membership applications. We did it not because we believed that we could keep out 'bad' people by asking them to sign—after all, evil people will be able to achieve their ends—but to provide some evidence that the LP was not a group advocating violent overthrow of

[14] LNC Policy Manual (June 6, 2021). https://www.lp.org/wp-content/uploads/2021/08/LNC-Policy-Manual-Adopted-thru-2021-06-06.pdf

[15] Letter from David Nolan (January 20, 1993). https://lpedia.org/wiki/Document:Letter_20_Jan_1993_David_Nolan_on_Meaning_of_Membership_Pledge

the govt. In the early 70's, memories of Nixon's 'enemies list' and the McCarthy hearings of the 50's were still fresh in people's minds, and we wanted to protect ourselves from future witch-hunts."

6.6.3. Anarcho-Capitalism and Objectivism

This interpretation strains credibility. See Tom Knapp's "I pledge allegiance ... to what?"[16], which outlines historical statements from Ayn Rand and Murray Rothbard predating the LP's formation which use the non-aggression principle as a foundational axiom for anarcho-capitalism and objectivism rather than a pledge against the violent overthrow of the government.[17] [18] [19] [20]

6.6.4. Fraud

Respondent argued that the non-aggression principle forbids both force and fraud. Again, LP Bylaw 4.1 states: "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." The plain language of the non-aggression principle included in the membership pledge does not include "fraud". Respondent and many other Libertarians seem to conceptualize a broader NAP drawn from other sources, which includes both force and fraud. Indeed, fraud is mentioned in the preamble to the LP platform[21] ("We believe […] that ***force and fraud*** must be banished from human relationships" [emphasis added]), in the LP statement of principles ("(1) the right to life — accordingly we support the ***prohibition of the initiation of physical force*** against others; […] and (3) the right to property — accordingly we […] support the ***prohibition of*** robbery, trespass, ***fraud***, ***and misrepresentation***." [emphasis added]), and LP platform plank 1.7 criminal justice ("Laws should be limited in their application to violations of the rights of others through ***force or fraud***, or to deliberate actions that place others involuntarily at significant risk of harm." [emphasis added]). However, LP members are not required to pledge adherence to the statement of principles or the platform, they are only required to pledge adherence to the membership certification, which does not mention "fraud".

[16] "I Pledge Allegiance to What" by Thomas Knapp (February 25, 2006). http://knappster.blogspot.com/2006/02/i-pledge-allegiance-to-what.html

[17] "Whatever may be open to disagreement, there is one act of evil that may not, the act that no man may commit against others and no man may sanction or forgive. So long as men desire to live together, no man may initiate – do you hear me? No man may start – the use of physical force against others." – from Galt's Speech in Atlas Shrugged (1957), and For the New Intellectual (1961), by Ayn Rand.

[18] "The recognition of individual rights entails the banishment of physical force from human relationships: basically, rights can be violated only by means of force. In a capitalist society, no man or group may initiate the use of physical force against the others." – from "What is Capitalism?" in Capitalism: The Unknown Ideal (1966), by Ayn Rand.

[19] "The fundamental axiom of libertarian theory is that no one may threaten or commit violence ('aggress') against another man's person or property. Violence may be employed only against the man who commits such violence; that is, only defensively against the aggressive violence of another. In short, no violence may be employed against a nonaggressor. Here is the fundamental rule from which can be deduced the entire corpus of libertarian theory." – from "War, Peace and the State" (1963), by Murray N. Rothbard.

[20] "The libertarian creed rests upon one central axiom: that no man or group of men may aggress against the person or property of anyone else. This may be called the 'nonaggression axiom.' 'Aggression' is defined as the initiation of the use or threat of physical violence against the person or property of anyone else." – from For A New Liberty: The Libertarian Manifesto (1973), by Murray N. Rothbard.

[21] LP Platform. https://www.lp.org/platform/

6.6.5. Enforceable Covenant?

All that aside, the membership pledge applies to all national Libertarian Party members, not just LNC members. If it were an enforceable covenant, the remedy would be suspension of party membership, not suspension from the LNC.

6.6.6. Conclusion

The NAP membership pledge is not a policy that applies to appellant in the manner suggested by respondent. This is not actually a "violation of policy" (let alone a "grave violation of policy"), and therefore does not fall within the meaning of "for cause".

Respondent submitted evidence in support of its allegation, while appellant submitted evidence rebutting the allegation. Review of evidence is moot because this is not a valid cause.

7. Severability

Appellant argues charges in the bill of particulars are not severable: if any one of them is found to not be within the meaning of "for cause" or found to have insufficient evidence to support the allegation, then the whole case fails and the JC must order reinstatement. Respondent argues charges in the bill of particulars are severable: if any one of them is found within the meaning of "for cause" to have sufficient evidence to support the allegation, then the JC should affirm. LNC members voting affirmatively for this motion thus indicate they agree with ***all*** of the charges listed; therefore, striking some of the charges should not and does not signify lack of support for the others. The charges are severable.

8. Stated charges a pretext for improper reasons

Appellant argued the stated "for cause" charges in the bill of particulars were a pretext for what she believes are the real reasons LNC members want to remove her: retaliation for her uncovering of alleged wrongdoing between the former LNC chair and the New Hampshire affiliate, ideological disagreements between radicals and pragmatists, discrimination relating to her Asperger's syndrome, or simply not liking her. Several LNC members clearly wanted to remove appellant for her behavior long before the New Hampshire situation developed. Several LNC members who agreed with appellant on the New Hampshire issue nonetheless voted to for her suspension. Several LNC members just as radical ideologically as appellant supported her suspension. There is sufficient evidence that LNC members voted to suspend appellant for the reasons outlined in the bill of particulars and not for an impermissible pretext listed above. Therefore, appellant does not meet the preponderance of the evidence (more likely than not) standard for her affirmative defense that the listed charges were merely a pretext for insufficient or improper causes.

9. Corporate law

Appellant argued respondent has no power to remove her from office because that would violate corporate law. She referenced a Virginia statute, but the relevant jurisdiction would be DC because the Libertarian Party is incorporated in the District of Columbia. DC statute §29-406.08[22] (concerning

[22] DC §29-406.08 "Removal of directors." https://code.dccouncil.us/us/dc/council/code/sections/29-406.08

"Removal of directors by members or other persons") repeatedly and unambiguously allows the organization's bylaws to override its default provisions. Appellant and her supporters alleged §29-406.08(a)(1) requires the articles or bylaws to specify what constitutes cause. However, it actually says in part "The articles or bylaws ***may*** specify what constitutes cause for removal." [emphasis added] (explicitly says "may", not "must"). Appellant and her supporters alleged §29-406.08(a)(4) allows directors (LNC members) to remove other directors (LNC members) only for reasons listed in §29-406.08(c). However, it actually says "The board of directors of a membership corporation shall not remove a director ***except as otherwise provided*** in subsection (c) of this section ***or in the articles of incorporation or bylaws***." [emphasis added] (our bylaws do provide otherwise in LP Bylaw 6.7, which requires "for cause").

Although not cited by appellant or her supporters, both DC and Virginia corporate law have provisions for removal of officers which are distinct from removal of directors. DC §29–406.43(b)(1)[23] says "Except as otherwise provided in the articles of incorporation or bylaws, an officer may be removed at any time with or without cause by: The board of directors;". VA §13.1-874(b)[24] says in part "A board of directors may remove any officer at any time with or without cause". There is no merit to the assertion that corporate law overrides our bylaws with respect to removal of officers; however, if it did that would help respondent and hurt appellant.

10. Advice to appellant, respondent, and others

In a case such as this the Judicial Committee would have preferred that the parties present only their strongest arguments. Respondent LNC included some allegations in its bill of particulars which were insufficient, did not provide a clear link between evidence and allegations, and should have indexed to relevant material in long videos with time stamps. Appellant Harlos presented some baseless arguments and submitted over 1,300 pages of political lobbying emails. An effort to support appellant resulted almost entirely in opinion about the appellant's character or arguments which had already been explored rather than novel insights into relevant legal and parliamentary questions.

11. Conclusion

For the reasons outlined above, the Judicial Committee concludes that respondent followed the proper procedure by using a motion to suspend (no need to use RONR Chapter XX) and counting the votes of alternates, respondent's bill of particulars included several charges within the meaning of "for cause" which also had sufficient evidence to support the allegation (including 1. harassment, threats to colleagues, 2. breach of fiduciary duty involving personal profit, 4. grave violation of policy - Conflict of Interest Policy, and 5. grave violation of policy - Harassment and Offensive Behavior Prohibition), and these stated charges were not a pretext for improper reasons. Therefore, we affirm respondent's suspension of appellant.

[23] VA §13.1-874. "Resignation and removal of officers."
https://law.lis.virginia.gov/vacode/title13.1/chapter10/section13.1-874/
[24] DC §29-406.43 "Resignation and removal of officers."
https://code.dccouncil.us/us/dc/council/code/sections/29-406.43.html

OPINION IN THE APPEAL OF CARYN ANN HARLOS' SUSPENSION FROM
THE POSITION OF LP/LNC SECRETARY

Opinion of Alicia Mattson voting with the majority to affirm the suspension. Chuck Moulton concurs on sections 4.0 and 4.1 below. Jim Turney concurs with the exception of section 5.4 below.

NOTE: References to Robert's Rules of Order Newly Revised (RONR) are to the 12th edition unless otherwise stated.

1.0 Jurisdiction

The Judicial Committee has jurisdiction pursuant to Libertarian Party (LP) Bylaws Article 6.7, which in part reads, "The suspended officer may challenge the suspension by an appeal in writing to the Judicial Committee within seven days of receipt of notice of suspension." Further confirmation of jurisdiction comes from LP Bylaws Article 8.2 which in part reads, "The subject matter jurisdiction of the Judicial Committee is limited to consideration of only those matters expressly identified as follows: … b. suspension of officers (Article 6, Section 7) …"

2.0 Executive Summary

Having reviewed voluminous filings by both parties, the LP bylaws, RONR, and having conducted a hearing on the matter on October 17, 2021, the National Committee's suspension of Caryn Ann Harlos is affirmed. LP Bylaws Article 6.7 includes that, "At the hearing the burden of persuasion shall rest upon the appellant." The appellant has not met the burden of demonstrating that the Libertarian National Committee (LNC) failed to follow the required process or did not suspend for cause.

3.0 Questions for Review

The questions to be resolved by the Judicial Committee are narrow:

1) Did the LNC follow the required procedure for suspension of an officer?
2) If so, was the suspension for cause, as required by Libertarian Party (LP) Bylaws Article 6.7?

Both sides threw a lot of proverbial spaghetti at the wall in terms of both process and cause, and there is no obligation to address every irrelevant or unsubstantiated argument.

4.0 Question: Did the LNC follow the required procedure for suspension of an officer?

LP Bylaws Article 6.7 prescribes in part that, "The National Committee may, for cause, suspend any officer by a vote of 2/3 of the entire National Committee, excepting the officer that is the subject of the vote who may not participate in that vote."

Appellant argues that the procedure was faulty in that it failed to provide due process, citing RONR 62:16 as being the standard for removal of an officer and arguing the procedure in RONR section 63 for a trial is required. Appellant is incorrect.

Article 13 of the LP Bylaws states, “The rules contained in the current edition of Robert's Rules of Order, Newly Revised shall govern the Party in all cases to which they are applicable and in which they are not inconsistent with these bylaws and any special rules of order adopted by the Party.”

Chapter XX of RONR encompasses sections 61-63 providing a default set of disciplinary procedures which apply unless the bylaws establish different procedures. (See also RONR 61:3 and 56:57 which indicate an alternate bylaw regarding disciplinary procedures is optional.) However, these default Chapter XX procedures are superseded by our specific procedures for suspension and removal of LNC officers (LP Bylaws Article 6.7) and of LNC at-large members (LP Bylaws Article 7.5). Each of those bylaws requires adoption of a motion to suspend for cause with the specified voting threshold followed by the suspended member’s option of a Judicial Committee appeal.

Further, LP Bylaws Article 8.3 requires that, “the Judicial Committee shall establish rules of appellate procedure to govern its consideration of matters within the scope of its jurisdiction.” The Judicial Committee is not directed to apply Chapter XX of RONR, but to instead establish our own procedure for the appeal. The Judicial Committee did adopt rules of appellate procedure, and they can be found attached to the bylaws on the party website. The rules of appellate procedure adopted by this body incorporate a number of additional process features beyond what was required with the LNC vote, including some elements of the superseded Chapter XX processes.

After RONR section 56 covers the topics which it recommends to be in every set of bylaws, RONR 56:57 suggests some optional bylaw articles and notes that, “In professional and some other societies there may be an article on disciplinary procedure; and such an article can be simple or very elaborate.” This provides express acknowledgment that alternative disciplinary procedures need not be elaborate, and simple ones are sufficient. It does not say that if the bylaw article is simple, that the procedural subjects not addressed in the simple process must be supplemented by the Chapter XX procedures. Though the LNC process is relatively simple, our entire process is not, given that our organization has a Judicial Committee appeal which is not contemplated at all by RONR.

This finding is consistent with the analysis in the 2008 written opinion by two members of the RONR authorship team on the question of the procedure for removal of an LNC at-large member under our bylaws at that time. That opinion found, “First, under the bylaws provision, apart from the super-majority vote requirement and the subsequent appeal, no special procedural requirements are applicable to the deliberations and action of the Libertarian National Committee on such a matter (unlike, for example, the special procedures contemplated by Chapter XX of RONR). Thus, for example, no notice of intent to move to suspend is required, no investigating committee need be appointed or report, and no trial need be held.”

Appellant argues that the Judicial Committee should disregard the analysis in the 2008 opinion because it dealt with an at-large LNC member rather than an officer, it was written relative to the 10th edition rather than the 12th edition of RONR, the bylaws have been amended since then, and because it did not address what is now in RONR 62:16 (identical language was found in the 10th edition at p. 653 line 21 – p. 654 line 13).

The first three of these arguments are distinctions without a difference. The LP bylaws have identical rules for suspension/removal of both officers and at-large members of the LNC. LP Bylaws Article 13 quoted above applies to the Article 6.7 officers language in the same manner as it applies to the Article

7.5 at-large member language. There are no changes between the 10th and 12th editions of RONR which would impact the question of whether the Chapter XX procedures are applicable in addition to the Article 6.7 procedure. The post-2008 amendment to the now-Article 6.7 language and the now-Article 7.5 language is the addition of the clause excluding the person who is the subject of the suspension from the vote, and that has no bearing on whether the Chapter XX procedures are applicable in addition to the Article 6.7 procedure.

Appellant argues that the 2008 opinion did not address the passage that is now RONR 62:16 (regarding removing a member from their elected office in the organization). The opinion did note that the bylaw provision for at-large suspension and removal procedures supersedes the procedural requirements in RONR Chapter XX (which includes RONR 62:16). The identical bylaw language for officer suspension and removal would in the same way supersede the procedural requirements in RONR Chapter XX.

Note that RONR 56:23 in advising bylaw content regarding officers suggests that, "Directors should be classed as officers." The LP bylaws ignore that suggestion and identify only four "officers" and designate other LNC members with terms such as at-large member and regional representatives.

When reading RONR, one must remember its meaning is in the context of its own internal presumptions, including that directors are classified as officers. The default procedures in RONR Chapter XX also cover how to discipline a member of the organization who is not elected to the organization's board. The distinction made in RONR 62:16 is between what RONR calls "officers" which would include others elected to the board of directors (our LNC), as opposed to a member of the organization who was not elected to the board. Relative to its own internal definitions, the passage which is now RONR 62:16 was written to also be about positions like our at-large LNC members, yet the 2008 opinion did not invoke that passage. Instead it said that the procedural requirements in Chapter XX were superseded, and that includes 62:16.

Finally, even if RONR 62:16 were applicable, it begins by saying "Except as the bylaws may provide otherwise, any regularly elected officer of a permanent society can be removed from office by the society's assembly as follows: …" Our bylaws do provide an alternative procedure for suspension and removal.

Conclusion: the LNC did follow its required procedure, which requires only adopting a motion for suspension with the required vote threshold. Presuming an appeal is filed as it was in this case, the Judicial Committee is tasked with executing the rest of the procedure. If the RONR Chapter XX procedures were additive to the bylaw requirements, our process would be quite prolonged.

4.1 Dissenting Opinion of Colleague

The dissenting opinion of Judicial Committee colleague D. Frank Robinson asserts a requirement of a 4-step process: an LNC motion for suspension, Judicial Committee appeal of the suspension, LNC motion for removal using the processes of RONR Chapter XX, then Judicial Committee appeal of the removal. There is no basis for this in our bylaws.

This theory is not consistent with LP Bylaws Article 6.7, which says in part regarding the Judicial Committee appeal, "At such time as the suspension is final, the office in question shall be deemed vacant." It does not say that if the suspension is upheld, then it goes back to the LNC for a further vote to remove, and another appeal of that removal vote. Affirmation of the suspension effects the removal

without any further process. Additionally, if the Judicial Committee issued no ruling, it would affirm the suspension and render the seat vacant.

Dissenting colleague Mr. Robinson's opinion includes an argument that, "What is being appealed is a suspension motion not a motion to remove. Therefore, none of the disciplinary procedures in Chapter XX of RONR are implicated yet. Chapter XX of RONR applies only after a suspension has been approved by the Judicial Committee and only if the LNC then proceeds with a motion to remove the officer." Chapter XX of RONR disagrees with such a distinction, in that RONR 61:2 states, "Punishments that a society can impose generally fall under the headings of censure, fine (if authorized in the bylaws), suspension, or expulsion." Though this committee has found that the Chapter XX processes are superseded by our bylaws, it is not correct that Chapter XX only deals with removals but not suspensions, thus the attempted distinction is not well-founded.

4.2 Some Other Unpersuasive Arguments on Process

The appellant argues that the LNC, "relied upon a temporary condition in order to obtain the vote threshold required" as though that should invalidate the vote. She made vague reference to an issue about the standing of alternates on the LNC, but she cites no rule which was alleged to have been violated. In other evidence Ms. Harlos conceded that votes of the alternates were technically proper. Our conventions often have very close elections in which the outcome hinges on who was or was not in the room at the time. This is part of the nature of meetings and assemblies with alternates, and is not a reason to invalidate a vote. The appellant portrays this as having been intentional on the part of the LNC, but video of the September 5 LNC meeting shows that the LNC generally accommodated the appellant's requests for when to take up the agenda item, and they moved it twice to accommodate her preferences.

5.0 Question: If so, was the suspension for cause, as required by Bylaws Article 6.7?

5.1 What Constitutes Cause?

Given no procedural violations by the LNC, the only remaining element to examine is whether the suspension was "for cause" as required in LP Bylaw Article 6.7. The bylaws do not define "for cause" with either generic terms or by listing particular causes to constrain the application of this phrase. The cause is left to the judgment of the LNC, though it is coupled with a high voting threshold followed by a Judicial Committee appeal so that the removal power cannot be used without broad agreement.

The appellant points to RONR references about cause in the default procedures of RONR 62:16 and 63:24. As already noted, the procedural requirements of these passages within Chapter XX are not binding, but even if they were, they use broad ranging phrases like misconduct; conduct tending to injure the good name of the organization, disturb its well-being, or hamper it in its work; or conduct that renders the person unfit for office. Even if these phrases created a limiting standard, the nature of the issues alleged in the bill of particulars clearly falls within these terms.

Similarly, RONR 61:1 recognizes as a broad concept, not specifically tied to the question of what constitutes cause, the right of an organization to protect itself from behavior "injurious to the organization or its purposes."

Though much material was submitted about varying legal definitions and legal case citations, government courts do not create binding standards here. Our party's own rules set the standards.

The bylaws do indicate deference is to be given to the judgment of a super-majority of the LNC, in that Article 6.7 puts the burden of persuasion on the appellant for the Judicial Committee appeal, and if the Judicial Committee were to not issue a ruling within 30 days it would affirm the LNC's decision. Given that, and given no procedural violations, a suspension for cause should only be overturned by a Judicial Committee reinstatement if the LNC decision lacked an underlying basis.

Since cause is not defined, it is not the case that an LNC member can only be suspended if they cross particular lines such as a bylaw violation, violating LNC policy, violating the Non-Aggression Principle, etc. Establishing these elements may be cause, but these are not the only actions which could constitute cause. If the LNC had no policy prohibiting harassment, engaging in harassment could still be cause.

Since the LNC offered a bill of particulars, the evaluation of whether the suspension was for cause is fairly straightforward. There are many elements alleged in the bill of particulars. The Judicial Committee does not have complete information to determine whether all the accusations made (by both sides) in this dispute are factually true or not. However, even one cause is sufficient to sustain the decision of a super-majority of the LNC.

5.2 Summary of Allegations

Respondents referenced a number of causes, the topics of which are generally summarized as: a long pattern of detrimental behavior, unethical monetizing of her position in support of attacks on her LNC colleagues, violation of the LNC's social media policy, violation of the LNC's conflict of interest policy, violation of the LNC's policy prohibiting harassment and offensive behavior, and violations of the Non-Aggression Principle with slander and harassment. Some of these allegations overlap each other and are handled together in the below analysis.

5.3 Pattern of Detrimental Behavior / Harassment and Offensive Behavior

The bill of particulars for the suspension asserts a "long term pattern of behavior, both in official communication and via her monetized social media and YouTube platforms, which is detrimental to the party and its operations and purposes" resulting in "the LNC being unable to engage in respectful and professional public discussion before the body, making the committee dysfunctional for fear of bullying, harassment, and inaccurate characterizations to discredit and disrupt the committee's work."

One of the more specific elements in the bill of particulars is violation of LNC Policy Manual Section 2.01.5, titled "Harassment and Offensive Behavior Prohibition." During the September 5 LNC meeting, even the appellant conceded there is merit to the harassment allegation. At video time stamp 04:22:27 she addressed the 4th charge by saying:

> "Harassment and offensive behaviors, that one perhaps – I'm not gonna blow smoke up your ass – perhaps that's the one that should have been stuck with, however there's a procedure for that […] That hasn't been done here."

Nowhere in the appellant's written submissions did she attempt to defend against the allegation that she had engaged in harassment. In the hearing before the Judicial Committee on October 17, when the appellant was asked about the issue of harassment, again she made no defense that she had not engaged in harassment, but instead alleged the LNC had not followed its policy for handling harassment.

Materials from the respondents included substantial evidence of behaviors that are reasonably described as harassment, evidence that the appellant intends it to be harassment, and she intends to continue it. Though the appellant argued in the Judicial Committee hearing that she only publicly critiques the job performance of her colleagues, the videos submitted by the respondents showed excessively personal critiques, insults, name-calling, and mockery of several of her colleagues and other party members (at times referencing their jobs or their family members), riddled with vulgarities and sexual terms and innuendo.

It is not clear whether the LNC followed the policy in question, as the issues were quite public without a need for investigation to uncover the facts. The policy itself requires that, "The LNC will take corrective and preventative actions where necessary." Apparently in this case the LNC felt that suspension/removal was a needed corrective action. Even if the LNC did not fully carry out the policy, the overwhelming vote for suspension on these grounds exceeds the vote threshold required to amend the policy and handle this instance differently, and the bylaw providing for suspension does not first require exhaustion of an LNC administrative remedy policy.

Both parties are in agreement about the harassment charge, and that alone is cause. Even the policy in question cautions that violations could result in discipline.

This conclusion doesn't mean that none of Ms. Harlos' criticisms have any merit, but not all choices for how to express disagreement are compatible with service on an organization's board. Nor does such a conclusion necessarily mean that Ms. Harlos is the only one on the LNC who has engaged in behavior which violates the harassment policy, though perhaps the LNC feels that none have to such an extent that it was necessary to act, or that it wasn't combined with other serious factors.

5.4 Unethical Monetizing / Conflict of Interest

The bill of particulars alleges that the appellant's, "practice, as an officer of the party, of attempting to monetize her position with frequent requests for contributions based on her status as an officer and in support of her attacks on the other members of the LNC are unethical." The bill of particulars further alleges violations of LNC Policy Manual Section 2.01 Subsection 2, titled "Conflict of Interest."

The appellant's general defense is that the LNC's conflict of interest policy does not forbid the existence of potential conflicts of interest, and she disclosed her YouTube channel.

The overall gist of the bill of particulars goes well beyond the technical question of disclosure of a potential conflict. It is more about the real-world impact of an actual and persistent conflict on the organization.

On the whole, the respondents are staking a position that a situation in which the appellant stands to financially benefit by making accusations against her colleagues creates a perpetual conflict of interest on every single item of business that the LNC considers, and with every interaction with her colleagues, and it's an ethical bridge too far to financially incentivize perpetuating conflict from within the LNC.

After reviewing the evidence, there's no doubt that the appellant uses accusations against the LNC as a whole and against individuals on the LNC to derive personal financial benefit. To reference an old adage, when your only tool is a hammer, everything looks like a nail.

It is not unreasonable for the LNC to decide with the totality of the circumstances this particular conflict of interest is so extensive and disruptive to the organization that it precludes continued LNC service. This combination constitutes cause.

5.5 Social Media Policy

The bill of particulars alleges violations of LNC Policy Manual Section 5.01 Subsection I, titled "Social Media Policy." The appellant's general defense regarding the social media policy is that it is about staff and volunteers, has no application to LNC members, and that various LNC members said when the policy was adopted that it did not apply to LNC members.

The text of the Social Media Policy is not clearly written. It does not define "qualified volunteers" to clearly delineate whether it includes LNC members. Much, but certainly not all, of the policy seems to be about use of LP-owned social media accounts, though subsection K includes, "Like their owners, a social account can embody different identities: Chair, LNC Member, etc." The appellant brands her personal social media accounts with her LNC Secretary title. If LNC members are included within "qualified volunteers" then there is an entire section on the policy's impact on use of personal social media accounts.

Given the muddled nature of this policy, and given that it is not necessary to resolve the issue, interpretation of this policy is left to the LNC, but to offer some unsolicited advice to the LNC: ambiguous policies are not helpful.

5.6 Non-Aggression Principle (NAP)

The respondents allege, "Furthermore, Ms. Harlos's public slander and harassment of the LNC and LP Members to achieve her political and social goals are in clear violation of the Non-Aggression Principle. All individuals must sign and adhere to the Non-Aggression Principle in order to be a member of Libertarian Party."

First note that there technically is no bylaw requirement to "adhere" to the statement in LP Bylaws Article 4.1, only to sign it. Regardless, the NAP is a core principle of our common philosophy, supporting key concepts in the preamble of our platform and within platform planks, such as advocacy that force and fraud be banished from human relationships, and opposing misrepresentation.

Both sides seem to want to use NAP-based political bludgeons to rally emotional responses, but competing arguments about the NAP as they relate to this case are landmines. The Judicial Committee is only tasked with answering the two questions at the beginning of this document. Cause for suspension was demonstrated on other topics above, without a need to wade into whether it also was a NAP violation. Even if the NAP arguments by respondents are poorly framed, it does not constitute a free pass for the behavior issues raised elsewhere in the bill of particulars.

Regardless of what constitutes a NAP violation, to the extent that this allegation is about slander (keeping in mind that truth is a defense to slander accusations), the evidence did show the appellant making various allegations against colleagues which were unfair at best and untrue at worst.

5.7 Some Other Unpersuasive Arguments

Some argue that there is no cause here because it is all about speech, and the LP supports free speech. The references to free speech in our platform are opposing government efforts to regulate speech. The government is not involved in this case. Even our platform opposes speech which constitutes fraud and misrepresentation. This case is about freedom of association. LP Platform plank 3.5 titled "Rights and Discrimination" says, "Members of private organizations retain their rights to set whatever standards of association they deem appropriate, and individuals are free to respond with ostracism, boycotts, and other free market solutions." Our bylaws give the LNC the power to disassociate from an LNC officer for cause. Exercising the power to suspend/remove the appellant from her position is not censorship as argued by dissenting colleague Robinson.

Appellant argues that delegates elected her and unless the cause is inconsistent with what the delegates knew of her then it is insufficient. It's worth noting that delegates also adopted the bylaw which allows suspension/removal for cause, and the bylaws do not establish such a limitation. Even so, one cannot presume to know what was in the minds of delegates when they decided how to vote. Sometimes they vote against Candidate A more-so than for Candidate B. One cannot presume all delegates had the same knowledge of the candidates.

Election does not provide a free pass that every choice one makes about how to handle disagreement is justified and that one bears no personal responsibility for those choices. Serving on the LNC always involves handling serious disagreements, but the discourse need not rise to the rancorous level at issue here in which disagreement is used as an opportunity for unfair, untrue, and inflammatory labels.

Appellant makes an implied argument that cause must be related to her conduct during meetings. The bylaws establish no such limitation. Appellant argues that RONR Chapter XX is applicable, and though those processes are not applicable here, that chapter clearly indicates that behavior outside of meetings can be cause for disciplinary action (see RONR 61:22), thus putting appellant in a position of making contradictory arguments. If a hypothetical board member embezzled from the organization, it wouldn't likely occur during a meeting, but it would be cause for removal. The LNC's harassment policy is not restricted to only apply to actions during a meeting.

Rather than directly addressing the pointed evidence, the appellant highlights some elements of the evidence which may be somewhat strained, and relies on the theory that the stated causes are just fronts for the real motives based in factionalism or whistleblower retaliation related to a New Hampshire controversy. Though appellant has not demonstrated those alternative motives, certainly there could be other motives in addition to the stated ones, but if the stated causes have merit, then they do.

6.0 Conclusion

The LNC followed the required procedure for suspension of an officer, and the suspension was for cause, as required by LP Bylaws Article 6.7.

7.0 Public Misrepresentations about Judicial Committee Process

Unfortunately our dissenting colleague Mr. Robinson has misrepresented both on social media and in his written opinion that he, "was not informed of any Committee vote imposing a gag order in perpetuity on all JC documents and proceedings nor to withhold evidence from some JC members while allowing access to others." This should not stand uncontested.

First, the executive session recording to which he refers is not "evidence," but it is part of the Judicial Committee's internal deliberations. No evidence has been withheld from Mr. Robinson.

Second, he has the circumstances backwards. The rules that this Judicial Committee adopted approximately a year ago include in rule 8, "The Committee may by a 2/3 vote deliberate in open session; otherwise, deliberations shall be in executive session." We did not vote to deliberate in open session. Executive session is a construct of RONR, which in 9:26 explains that contents of executive session may not be divulged unless a vote is taken to do so. In other words, Mr. Robinson has known since the beginning of the term that this was the rule, and he has published evidence on social media that we have, in fact, discussed it with him this week. His recently-stated intention to divulge executive session material cannot be justified.

OPINION OF VERMIN SUPREME

“Sure, Vermin, run for a spot on the judicial committee”, they said.
“It will give the appearance that you’re engaged with the party”, they said.
“It will burnish your reputation as a serious person”, they said.
“It will be good for your resume”, they said.

“Don’t worry, it is a do nothing position” , they said.
“The JC almost never even meets”, they said.
“It’s an honor”, they said.

I said, “Sure, I could be a judge, I mean if Jim Grey can do it, why not me?”
“Being a judge is cool, I guess”, I said.
“Ummm. Ok, fine, make me a judge then”, I said.

Then the people spoke.

And the rest, as they said, was history.
And this is that history.

Let me say this particular case was indeed, extremely notable for its total lack of ponies.
It was, however, chock full of bylaws.
Normally that would be enough to lose my attention, right there.

This case was also chock full of drama.
Normally that would be enough to send me tiptoeing out of the room.

However as a duly elected judge, it was my duty to stay in that dramatic room and pay very close attention.
Close attention, I did pay, to a vast array of ‘evidence’ and opinions, testimony and deliberations.

This case was not about drama.
It was about bylaws.

Bylaws > drama.

Case closed.

Bangs gavel.

(Cue dramatic closing music.)

Thank you,

Judge Vermin

OPINION OF JIM TURNEY

I voted to affirm the suspension of the secretary, Caryn Ann Harlos, for reasons already well considered and written by my fellow committee members.

I concur with the opinion of Alicia Mattson except for her section 5.4, "Unethical Monetizing" and with the opinion of Dr. Chuck Moulton except for his section 6.2 on monetization. The summation of my view of the monetization charge is similar to Moulton's summation of section 6.3, "…this is not a valid cause."

There is not a clear policy that applies to monetization. I do not believe this case rises to a "violation of policy" under current Bylaws and Policy Manual, and therefore does not fall within the meaning of "for cause".

Ironically, I also concur with much of Dr. Mary Ruwart's dissenting opinion, especially her advice, "…delegates going to Reno might wish to consider revisions to the bylaws accordingly."

My view of the "clearly erroneous" standard in Dr. Moulton's opinion is a meaning with a lower standard than Dr. Ruwart found in the legal sense but higher than she appears to believe based on her description of her experiences.

I don't believe that it is appropriate for the Judicial Committee to rule based on our personal conjecture of the consequences ("I fear that the Moulton Opinion in this case is going to have a chilling effect…") but instead on a narrow or strict interpretation of the Bylaws, Policy Manual, RONR and other ruling documents, as applicable.

Despite having personally experienced some of the same sort of "hostile working environment" that Dr. Ruwart describes, I believe there is a high threshold before we substitute our view of justifiable cause with that of the respondent given our Bylaw 6.7, "…the burden of persuasion shall rest upon the appellant."

Memorandum of Opinion
by Judicial Committee Member D. Frank Robinson*
on the Appeal of the Suspension of the Secretary of the Libertarian National Committee, Caryn Ann Harlos
(11/11/21)

The Libertarian Party was founded on a pledge to challenge the cult of the omnipotent state and to defend the rights of the individual. Doing one requires the other and also means opposing all cults or cliques of the infallible personality.

There are certain procedures which, if engaged, serve as peer review of all claims of omnipotent infallibility. All the procedures are rooted in the premise that speech must be free so that illusions can exposed and rejected. The utility of free speech is not a legalistic doctrine. It the exercise of an innate biological function of intelligence. Without conviction in the necessity of free speech the cults and cliques of infallibility will become omnipotent using ignorance, impulse and rage.

The right to unbound freedom of political speech, including the right to advocate the violent overthrow of a government, ended in the United States with the conclusion of the American Revolutionary War. With the establishment of the United States under the Articles of Confederation freedom of speech no longer included the right to advocate the overthrow of government and that has remained the barrier to absolute freedom of speech ever after.

The founders of the Libertarian Party (Party) recognized the force majeure behind that barrier to absolute freedom of speech even within the Libertarian Party. That is why we insist upon the non-aggression pledge to signify that we do not challenge the cult of the omnipotent state by advocating for its violent overthrow. In grossest terms, we are not suicide bombers or the political arm of some militia movement. We are persuaders.

However, within the Party itself there were to be no further barriers to freedom of speech on matters political, economic or social. Freedom of speech is how humans negotiate consent and cooperation to establish order peacefully or signify withholding consent or cooperation. Any barriers to freedom of speech are barriers to consent and impose coercion to prevent negotiation for cooperation. Such barriers deny the efficacy human intelligence.

The members of the Libertarian Party are now confronted by some persons in temporary positions of authority seeking to impose barriers to freedom of speech far beyond the prohibition of advocating the violent overthrow of the government. The prudential vision of the founders, of which I am among the few survivors, was that freedom of speech among Libertarians should not be punishable so long as the speech did **not** advocate the violent overthrow of the governing force majeure but also did not advocate the use of force or fraud in our social relations. Fraud means extracting property from another by deception.

The present attempt at censorship within the Party takes the form of alleging that some speech is force or fraud. Speech, they contend, that is critical public figures leading the party must meet some vague standard of decorum. There more than a taint of the puritanical in these claims. Speech itself is not force unless the decibel level can cause physical injury and even then people have been known to consent even to that. There is no threat to property rights in this controversy to appeal to the Judicial Committee.

What the attempt at censorship of member and Party official is an impairment of the right of association. The members have the ultimate means to protect associational rights by withdrawing from the association. They can, and they have, provided for other means of protecting their associational rights with rules of procedure which preserve the ability of the association to function while also preserving the rights of members to control short of secession.

These certain procedures which, if engaged, serve as peer review of all claims of omnipotent infallibility. All the procedures are rooted in the premise that speech must be free so that illusions can exposed and rejected. The utility of free speech is not a

legalistic doctrine. It the exercise of an innate biological function of intelligence. Without conviction in the necessity of free speech the cults of infallibility will become omnipotent using ignorance, impulse and rage.

The Bylaws give the aggrieved a clear cut choice: appeal or abandon your personal seven day ticket to appeal and resign by default. The LNC need do nothing further to remove an officer or LNC member.

"Upon appeal by ten percent of the delegates credentialed at the most recent regular convention or one percent of the Party sustaining members the Judicial Committee shall consider the question of whether or not a decision of the National Committee contravenes specified sections of the bylaws. If the decision is vetoed by the Judicial Committee, it shall be declared null and void." Article 7, Section 12.

However, there are no specific numbers of days for expirations of appeals of any LNC decision on convention delegates or members. They only have to meet a quota - ten percent for delegates and one percent for members.

For delegates their right of appeal only expires when a new convention of delegates is seated. For members there is no expiration date even with a 100% turnover in the membership.

For neither group is there a default in favor of the LNC if the Judicial Committee fails to rule. All Judicial Committee decisions can be appealed to the next convention of delegates.

In addition to being individuals regulated by government censorship prohibiting speech advocating its overthrow the Party is a government regulated corporate body, a federally regulated organization by the Federal Election Commission (FEC). As a political party seeking recognition to have permission from the various states to have voters allowed to vote for our candidates on the ballots monopolized by the states, the Party is a regulated quasi-governmental organization subject to force majeure in matters of free speech under government official's interpretations the First Amendment. Instead of extended dicta on my part I reference this amicus brief to the Supreme Court on a case seeking a decision on the free speech rights of a board member of a public body in the State of Texas. Houston Community v Wilson

The Respondents claim that fraudulent speech violates the non-aggression pledge required of all Party members. Can speech be fraud? A fraud takes place when someone acts in response the speech of another by giving up property. **One cannot be defrauded by speech one does not act on.** Quoting the first sentence from Black's Law Dictionary

on the definition of fraud it says, “An intentional perversion of truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him or to surrender a legal right.”

What valuable thing has the Libertarian Party National Committee (LNC) been induced by its Secretary to part with? It cannot be anything reputational. The members of the LNC, individually or collectively, have no property right to their reputations within the affairs of the Party. If they wish make such claims it must be pressed outside the Party in the courts of the force majeure.

Projecting criticism of Party officials, as if such criticism was of all members and the association itself, is a deprivation of individual rights of association and free speech.

For what they are worth, in the realm of force majeure the precedents are adverse the punishing as defamation of one’s reputation with financial penalties if one is a public figure because speech punishable speech must show beyond a reasonable doubt actual malice. It is reasonable to assume the members of the LNC pressing their claims of malicious speech by the Secretary have calculated their prospects for external vindication of their feelings by the force majeure and elected instead to seek retribution only within the governing rules of the Party. Yet as indicated in Addendum B they may still be liable to retribution by the force majeure. So, how do the Party’s governing rules apply to the action of the LNC?

Within the governing rules of the Party I find this dispute is less about “just cause” alleged for removal of any officer of the Party and more about who is in charge of defining the rights of the members.

As Chair of the Constitution, Bylaws and Rules Committee at the founding convention of the Party I, and the members of that committee and delegates, anticipated that it was likely a time would come when some in positions of authority would attempt the subvert the purpose of the association for personal, if not, political advantage. Foremost in our minds in 1972 was the mentality of the President of the United States and the Director of the Federal Bureau of Investigation and their proclivity to compile “enemies” lists. We sought to devise some shields which the courts of the force majeure might give weight in our favor against applied authoritarianism. This was our external shield of members right of association.

The shields we improvised are unique among U. S. political parties. In order to secure the rights of association for all members as a first internal shield we have most of our

principal national officials elected by the delegates of our biennial national convention instead of a clique of self-entrenched insiders.

The second internal shield we improvised was an institution found nowhere else in U. S. political parties. We created a standing committee independent of the LNC whose members were also elected by the delegates of our conventions. For lack of imagination, we called the committee the Judicial Committee because it was to function as a court of appeals for all members from actions by the LNC. The limits of its jurisdiction are spelled out in the Bylaws. See below.

The Judicial Committee cannot independently proclaim policy for the Party. That role is reserved ultimately to the membership's delegates in convention so long as those proclamations as resolutions and platform statements or "planks" are consistent with the founding Statement of Principles as adopted unanimously at out founding convention.

Which brings us to the third internal shield against subversion or corruption. The Statement of Principles can only be amended by a super majority of seven-eights of all registered delegates to a national convention. That means a quorum to vote on a motion amend is more than seven-eights of the delegates and that quorum must be unanimous to adopt any amendment.

Subsequently, the Secretary the LNC is seeking to remove from office, secured at a recent convention a shield for the seven-eights shield by getting the Bylaws amended to make amending the seven-eights rule itself only amendable by a seven-eights majority vote of delegates.

The first issue and most dispositive issue to consider in this appeal is whether pursuant to the LP Bylaws an officer can be suspended via a regular motion adopted by a two-thirds vote of the LNC in lieu of all other provisions of the Bylaws. More specifically, does the two-thirds vote requirement for removal of that officer pre-empt a trial and all of the other steps as provided for in the disciplinary procedures of Chapter XX of Roberts Rules of Order, Newly Revised, 11th Edition (RONR)?

The two-thirds vote provision for suspension is a redundancy to what is in Chapter XX of the RONR. The Bylaws provide that such a vote is to suspend an officer. It is not a vote to remove an officer permanently. The Bylaws do not state for how long an officer may be suspended from performing their duties. It may for the duration of one motion and a vote thereon such as the Bylaws provide for the suspension motion itself. Or the suspension may be for the duration of a single meeting of the LNC but can the suspension be for remainder of the officer's term in office?

Such a motion may be reconsidered or rescinded by the LNC at anytime whether or not the motion itself included an expiration time for the suspension. If appealed to the Judicial Committee the LNC still retains the authority to reconsider or rescind its motion even after the Judicial Committee has published their decision.

Regardless of the "cause" or duration of any motion to suspend an officer, the Bylaws provide the right of appeal to the Judicial Committee to determined if the suspension was just and proper and a time limit of seven days is set for the officer to submit their appeal after receiving notice by the LNC. Should the officer not file an appeal within the seven days for any reason **only then** does a suspension motion escalate to removal of the officer by default – in effect resignation.

However, if the officer **does appeal** suspension to the Judicial Committee, the Committee must make a determination of the merits of the motion. Upon the ruling of the Judicial Committee affirming the LNC suspension motion **only then** does Chapter XX of RONR come into effect as the required disciplinary procedure for removal and pursuant to the Bylaws. Let me be as precise as the words at my command allow. Affirming an LNC motion for suspension for an indefinite period becomes by default a motion to remove. All motion to remove trigger the member or officer due process protections of Chapter XX.

Now it has been argued by the members of the Judicial Committee consensus that sending the issue back to the LNC to allow them to rescind their attempt at removal or follow the due process procedures of Chapter XX is too divisive. I submit that the LNC should have considered that in their hearing in executive session as required by Chapater XX. Frankly, the LNC blundered. As you shall see below in matters of party discipline the LNC has often blundered and casually dismissed the RONR as a nuisance. It is distressing that a consensus of the Judicial Committee also considers the RONR a nuisance and blames it as a source of divisiveness in the Party.

Because the Bylaws give the Judicial Committee the authority to pass judgment on all suspension motions for officers, the Judicial Committee also has jurisdiction over the removal proceedings triggered by its approval of an adopted suspension motion by the LNC **and** its subsequent review by the Judicial Committee of any motion for removal. Should the Judicial Committee on appeal find the LNC failed to follow the due process procedures for removal of an officer in Chapter XX of RONR that decision under the Bylaws can be appealed to the delegates of the next national convention.

If Judicial Committee finds the original suspension motion without merit for any reason, the Bylaws provide that the Officer is restored to the position and authority to which the

convention elected them. Only a new LNC motion adopted to suspend an officer can start a removal procedure all over again.

There has been a confusion that the Bylaws procedures for appeals of a suspension preempts all procedures for removal. This is misconstrues the Bylaws. The Bylaws do not allow the LNC to remove an officer by an ordinary motion with or without prior notice solely by a two-thirds vote. The Bylaws only allow for a suspension that relieves the officer of their duties and authority until the Judicial Committee rules that the LNC may proceed to the disciplinary process or the officer, by default, resigns.

"*The suspended officer may challenge the suspension by an appeal in writing to the Judicial Committee within seven days of receipt of notice of suspension. Failure to appeal within seven days shall confirm the suspension and bar any later challenge or appeal."* Article 6, Section 7. What is being appealed is a suspension motion not a motion to remove. Therefore, none of the disciplinary procedures in Chapter XX of RONR are implicated yet. Chapter XX of RONR applies only after a suspension has been approved by the Judicial Committee and only if the LNC then proceeds with a motion to remove the officer.

A suspension of an officer pending their removal or restoration does not prevent the LNC from appointing any member of the Party to serve as interim officer for the duration of the suspension whatever the duration. The elected officer who has invoked their right of appeal remains an officer even if prevented from performing the duties of their office until all disciplinary proceedings in Chapter XX of the RONR have been exhausted and their removal effective by the approval of the Judicial Committee if so appealed by the officer.

By analogy, the impeachment of a President does not prevent that person from performing the duties of the office until "convicted" for removal. In the internal operation of the Libertarian Party a suspension acts like some provisions of the 25th Amendment. Under our Bylaws the LNC can prevent an officer to taking actions which could be harmful to the Party **before** the process of removal is completed by suspending a person. The officer must still be "convicted" under Chapter XX of RONR to be removed from office and such "conviction" may still be appealed to the Judicial Committee.

The Judicial Committee need only consider the merits of causes for suspension of an officer that are stated by the LNC when an appeal lodged. Causes for suspension need not be sufficient for removal provided the duration of the suspension **is not a de facto removal**. **A suspension with an indefinite duration is a de facto motion for removal**

and may be immediately terminated by the Judicial Committee. Any motion by the LNC to remove an officer permanently must be in conformity with the Bylaws and those Bylaws include all of the RONR except to Bylaws which supersede specific language in the RONR with respect to **suspensions and removals**. Nothing in the Bylaws supersedes Chapter XX of the RONR in its entirety.

The Judicial Committee need not consider the merits of the causes for removal of an officer until presented with an appeal from an LNC **removal** decision by the procedures of Chapter XX of RONR. process preempts the invocation of any disciplinary process in Chapter XX. The correct order for due process under the Bylaws is a motion to suspend, an appeal, a motion to remove under the procedures of Chapter XX, appeal of decision to remove, and conclusively a final decision on the removal by the Judicial Committee.

The Judicial Committee may take note that whatever merit of the causes may be for the suspension of an officer if it may result in removal. The period of that suspension is itself a disciplinary matter prior to any proceeding for removal. The officer has in effect been detained under charge pending trial. The Judicial Committee has the authority to release the detainee and dismiss the allegations. The LNC retains the authority to bring new allegations and "detain" the officer once again. So long as an officer invokes their right of appeal, the Judicial Committee under the Bylaws assumes authority for the final right of determination in all matters explicitly stated in the Bylaws, subject only to Bylaw amendment in convention. Article 8, Section 2: *"The subject matter jurisdiction of the Judicial Committee is limited to consideration of only those matters expressly identified as follows:*
a. suspension of affiliate parties (Article 5, Section 6),
b. suspension of officers (Article 6, Section 7),
c. suspension of National Committee members-at-large (Article 7, Section 5),
d. voiding of National Committee decisions (Article 7, Section 12),
e. challenges to platform planks (Rule 5, Section 7),
f. challenges to resolutions (Rule 6, Section 2), and
g. suspension of Presidential and Vice-Presidential candidates (Article 14, Section 5)."

We need not address any subject matter in this opinion other than "*suspension of officers (Article 6, Section 7).*

I find the LNC Bill of Particulars for suspension under appeal provides no culpable malfeasance by the appellant. It does contain a litany of speeches by the appellant which are not justicble if directed at public figures and are political and impugn a public figure's fitness for office or public esteem.

All officers, candidates and aspiring candidates for offices public or partisan are public figures. In libertarian terms they have no safe haven within the Party from criticism in defamation law. And within the context of Libertarian Party affairs, all members have an absolute right of free speech concerning Party affairs. Elected officials and national candidates of the party should act prudentially when making statements about the LP Statement of Principles or the non-aggression pledge. But discipline for such acts of speech are not subject to any the disciplinary provisions of the Bylaws (Judicial Committee appeals) regarding suspensions and removals or expulsions under Chapter XX of the RONR.

The sole exception to free speech rule which is subject discipline under the Bylaws is repudiation of the pledge that the Libertarian Party does not advocate the overthrow of the government by force or violence. Challenging the legitimacy of the government is **NOT** tantamount to advocating its overthrow by force. The appellant in the present instance has not been alleged in the Bill of Particulars of having advocated the violent overthrow of the government.

All these provisions for a Judicial Committee and the right to appeal in certain limited matters are to secure as much as practicable the rights of members and the officers elected by the members in convention as delegates. Members retain the ultimate authority under the Bylaws to alter those Bylaws to further secure the rights, as well as to abandon the party all together and institute such other organizations to advance their political values.

An officer may, by wavering their right of appeal of suspension, allow the suspension, by default, to become removal. Such officer waver is equivalent to resignation. This rule is because a suspended officer may be disabled or dead or simply unwilling to pursue

I now turn for comparison with the actions of a recent former officer to the actions of the Secretary in this appeal. We have a situation which arose in 2018 when the LNC failed to act to discipline an officer, the Chair, who was grossly derelict in performing the duties of their office and did cause actual harm to the party and impeded its functions under the Bylaws. In 2018 at the national convention there was an election to fill the positions of the Judicial Committee. The presiding Chair aborted the election in progress by declaring adjournment. One of the candidates immediately challenged the ruling of the Chair. The Chair simply declared the objection out of order because the body was adjourned. The result was to leave the LP without a duly elected Judicial Committee until the 2020 convention. That nasty old RONR is clear in such an instance. The Chair was obligated to immediately consult with the convention parliamentarian and could have reversed his ruling so that the election could have been concluded. The excuse given

at the time was that adjournment was required because the audio-visual technicians needed to break down their equipment at 6pm. There is no provision in the Bylaws for adjournment to remedy a technical issue. There was no threat to life and limb to justify an emergency adjournment. The Libertarian Party has held many conventions without any audio-visual facilities and conducted elections without AV.

The actions of that past Chair were ignored by the LNC. The Chair was not censured, suspended or removed from office. Some persons claimed that because there was no JC for the Chair to appeal to then he could not be disciplined in any way by the LNC. Chapter XX of RONR be damned. That negligence by the Chair caused harm to the Party. The failure of the LNC to discipline the Chair for his negligence caused harm to the Party.

Subsequently, when the Chair's blunder came their attention, the LNC chose to create an ad hoc advisory 'Judicial Committee" consisting of those seven candidates who had received the most votes when the election was aborted. This was nothing but a pointless attempt at saving face for the Chair. Serendipity favored the LNC because there were no attempted appeals to the Judicial Committee for the next two years.

Returning to the roles of the LNC and a duly elected Judicial Committee in matters of Party discipline. The foundational document for disciplinary action within the Party in convention or by any subcommittee is the latest edition of Roberts Rules of Order, Newly Revised 11th ed. (RONR). In the 1972 Denver convention the delegates adopted my committees Bylaws provision for the Judicial Committee as an additional level of protection for members serving as officials of the party and as state affiliate parties and all national sustaining members. I must state emphatically as one at the center of the creation of the structure of the Party that the appeals process to the Judicial Committee was never interned to be a total and complete substitution for the due process procedures delineated in RONR. We in the Judicial Committee are explicitly designated to receive appeals on matters enumerated in the Bylaws from the conclusion of the all disciplinary procedures in the RONR which currently are in Chapter XX. It does not matter what descriptive name is given to a disciplinary action by the LNC. What matters is penalty.

In addition to, **but not as a substitute** for any disciplinary action in RONR, we provided that the LNC had a power to suspend an office as a matter of discipline, but that any such suspension entitled the suspended officer the right of appeal to Judicial Committee for an independent evaluation of its justness. The Judicial Committee under the Bylaws has the authority to terminate any suspension and restore the elected officer to their office effective immediately. If, **and only if**, the Judicial Committee does not act to restore the

officer to their office by affirming, or by deadlocking, does an LNC suspension default to removal.

The reasons for this arrangement are prudential. The Judicial Committee may be unable or unwilling by a majority vote to vindicate the disciplined officer. The office then becomes vacant. The LNC, not the JC, has authority to fill such vacancy. The vacancy in any party offices must be filled expeditiously for the party to function in compliance with the laws of the force majeure governing corporations. There is no reason for members of the Judicial Committee to extend prejudicial deference to a decision of the LNC. All due deference has been allocated in the Bylaws by making removal the default consequence if the appellant's arguments against suspension are not persuasive to a majority of the JC. On the contrary, if there is to be any deference it should be to a member asserting their right of free speech.

The founders' convention and all subsequent conventions have not refined what the LNC may rely on as justifiable cause for suspension or removal beyond what is discussed in the RONR and the demands of force majeure. Whether such refinements are needed is for convention delegates to decide in the future. It is not a matter for incorporation in the Rules of Appellant Procedure. Members of Judicial Committee as individual sustaining members of the Party presumably retain their free speech rights to suggest amendments to the Bylaws to delegates just as members of the LNC in their capacity as individual sustaining members also have a presumed right to propose amendments.

At this time, and in this particular instance, I find the LNC Bill of Particulars procedurally defective for ignoring Chapter XX of RONR and substantially insufficient as cause by attempting to abridge a member's freedom of speech. The procedural defects are sufficient to declare it null and void. However, it does also fail to justify cause for the suspension of the Secretary. Since the motion for suspension and removal of the Secretary is insufficient on all grounds, I deem her suspension should be terminated. She is not removed from office and must be immediately restored to office to preform the functions for which the delegates elected her. I am a dissident minority, however.

A majority of the Judicial Committee believe that members of the LNC should only hold their offices solely at the sufferance of two-thirds of their peers. They imply the Judicial Committee exist only to present an editorial critique of their verbiage. Am I too harsh on my colleagues? Is the removal of an officer elected by the delegates for their allegations of negligence and incompetence by members of the LNC not harsh beyond speech?

This attitude of going along to get along was a substantial reason why most of the founders of the Libertarian Party were in rebellion from the Republican party of the

1960-70s. At the founding of the Libertarian party we sought to structure our party to encourage the members holding the leadership accountable for all their decisions to all other members not only at biennial conventions but also at any other time.

It was my contention then, and remains my contention today, that the only practical way to hold leaders accountable is to provide the members with procedures in the Bylaws to protect them from intimidation and retribution by cliques in power. Such cliques will form in all hierarchical organizations. The core of such member protection must a fierce commitment to member speech rights. People given titles of authority tend to take any thing less than subservience as abusive harassment which justifies them to extrapolate all criticism as an attack on the organization itself and which entitles them to strike back self-righteously to cast out the perceived heretic.

This Libertarian Party was founded in heresy. That political heresy is the primacy of the individual to all forms of voluntary cooperation social, economic and political. The means of eliciting voluntary cooperation is speech and non-aggression. Speech is not aggression, it a means of resisting aggression and mobilizing resistance to aggression. The mobilization of resistance is the raison d'être for political activism.

Suppressing member speech within the Party is not only disruptive of the objectives of the Party and an injustice to members but has other potential risks.

Upholding the removal, sub rosa as an indefinite suspension, of an officer by this Judicial Committee for exercising speech rights brings with it a risk of intervention in internal Party governance by the force majeure. Such an intervention could end whatever challenge to the cult of the omnipotent state the Party might ever pose electorally.

I note that the interpretation of Bylaws provisions as superseding the RONR in any way should be as narrowly construed in their application on behalf the member until amended by a convention of delegates. It is the delegates who must delegate power to the leaders.

Returning to the suspension appeal process. If the JC affirms the LNC decision for suspension, the LNC still retains the authority to re-instate the LNC officer or member OR the LNC must begin removal proceedings as prescribed in RONR.

This is the crux of the procedural controversy. The “LNC caucus” asserts that suspension is removal if the JC affirms their decision.

The “D. Frank caucus” asserts that suspension can only effect removal if the aggrieved defaults appealing. Furthermore, by lodging an appeal the aggrieved invokes JC jurisdiction over all further proceedings including an appeal from any decision resulting from RONR proceedings by the LNC.

The LNC caucus, on the other hand, declares RONR irrelevant before or after anything the appellant or the JC does.

The Bylaws of the national Libertarian Party do not redefine the word 'suspension' to mean 'removal' EXCEPT in the singular instance that an entity suspended declines for any reason to appeal their SUSPENSION. Even then the LNC retains the authority declare the suspension ended OR proceed with REMOVAL per RONR proceedings. Otherwise, the JC is irrelevant to protect member rights and the LNC is absolute ruler in all matters and can purge any entity in the party by two-thirds or three-fourths vote. In which case only by petition of ten percent of the delegates or one percent of the sustaining membership can appeal to the Judicial Committee to reverse the LNC be made. Individuals are stripped of rights to appeal or any protection of due process in RONR.

In conclusion, for the Libertarian Party to assert its claim to the right to have only voters pass judgment on its objectives and candidates, those objectives must not be sacrificed in its internal affairs beyond what is absolute minimum demanded by the force majeure. That absolute minimum remains our pledge not advocate the violent overthrow of the force majeure.

The Libertarian Party can contend the ultimate controllers of that force majeure must be the voters. But if the leaders and candidates of the Libertarian Party do not uphold the people’s right to challenge the cult of the omnipotent state by ballot, including the right of speech unfettered, short of advocating the violent overthrow of the force majeure, then the Party may as well cease seeking access to the ballot under the name Libertarian Party. Such public advocacy is severely undercut by hypocritical inconsistency with in party affairs. The LNC action has potential to harm our candidates in future elections.

In dissent from the consensus of the Judicial Committee, I find the LNC Bill of Particulars without merit as procedurally defective for lack of due process.
In dissent from the consensus of the Judicial Committee, I find the allegations in the LNC Bill of Particulars peculiar in claiming the one’s speech can violate their presumed property right in their subjective opinions of their reputations.

As Mr. Bill Sorenson pointed out to me: “The reading of the Bylaws such as it is is very

deliberate. They could choose to have due process, a trial, even if RONR and the Bylaws were silent on the issue and left it to the LNC to decide. They chose not to."

The LNC removal by indefinite suspension action may also be illegal and place some LNC members at risk of removal from office for violating DC law by their action to remove the Secretary. The District of Columbia is where the LNC was incorporated. See Addendum B.

See also: Ban on "Personally Directed" Criticism Violates the First Amendment

Therefore, I conclude, the Secretary should immediately resume the duties for which she was elected by the delegates of the Party in convention.

Nota Bene:

There have been "late breaking developments" as I was preparing to submit this document to the Chair of the Judicial Committee for distribution. I was informed via email by Chuck Moulton that he is seeking to withhold evidence which obstructs my concluding writing this opinion. I was not informed of any Committee vote imposing a gag order in perpetuity on all JC documents and proceedings nor to withhold evidence from some JC members while allowing access to others.

Therefore, I am releasing this paragraph as an excerpt from my pending opinion:
I am still puzzled what some members of the JC said in Executive Sessions of the JC they now regret saying and demand it be concealed. I will NOT be given access to the recording of October 31. I know with certainty that no one advocated the violent overthrow of the government in those executive sessions.

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* D. Frank Robinson was Chair of the Constitution, Bylaws and Rules Committee at the founding convention of the Libertarian Party and is the principle author of the Judicial Committee provisions as well as the seven-eights rule to amend the Statement of Principles.

Addendum A. Bylaws of the Libertarian Party. As of October 31, 2021 the Bylaws may also be found online at: https://www.lp.org/bylaws-and-convention-rules/

Addendum B. District of Columbia Non-profit Corporation law on removal of Directors

Addendum C. Important definitions

Addendum B.

DC law excerpt

§ 29–406.08. Removal of directors by members or other persons.

(a) Removal of directors of a membership corporation shall be subject to the following provisions:

(1) The members may remove, with or without cause, one or more directors who have been elected by the members, unless the articles of incorporation or bylaws provide that directors may be removed only for cause. The articles or bylaws may specify what constitutes cause for removal.

(2) Except as otherwise provided in the articles of incorporation or bylaws, if a director is elected by a voting group of members, by a chapter or other organizational unit, or by a region or other geographic grouping, only the members of that voting group or chapter, unit, region, or grouping may participate in the vote to remove the director.

(3) The notice of a meeting of members at which removal of a director is to be considered shall state that the purpose, or one of the purposes, of the meeting is removal of the director.

(4) The board of directors of a membership corporation shall not remove a director except as otherwise provided in subsection (c) of this section or in the articles of incorporation or bylaws.

(b) The board of directors may remove a director of a nonmembership corporation:

(1) With or without cause, unless the articles of incorporation or bylaws provide that directors may be removed only for cause; provided, that articles or bylaws may specify what constitutes cause for removal; or

(2) As provided in subsection (c) of this section.

(c) The board of directors of a membership corporation or nonmembership corporation may remove a director who:

(1) Has been declared of unsound mind by a final order of court;

(2) Has been convicted of a felony:

(3) Has been found by a final order of court to have breached a duty as a director under part C of this subchapter;

(4) Has missed the number of board meetings specified in the articles of incorporation or bylaws, if the articles or bylaws at the beginning of the director's current term provided that a director may be removed for missing the specified number of board meetings; or

(5) Does not satisfy at the time any of the qualifications for directors set forth in the articles of incorporation or bylaws at the beginning of the director's current term, if the decision that the director fails to satisfy a qualification is made by the vote of a majority of the directors who meet all of the required qualifications.

(d) A director who is designated in the articles of incorporation or bylaws may be removed by an amendment to the articles or bylaws deleting or changing the designation.

(e) Except as otherwise provided in the articles of incorporation or bylaws, a director who is appointed by persons other than the members may be removed with or without cause by those persons.

§ 29–406.09. Removal of directors by judicial proceeding.

(a) The Superior Court may remove a director from office in a proceeding commenced by or in the right of the corporation if the court finds that:

(1) The director engaged in fraudulent conduct with respect to the corporation or its members, grossly abused the position of director, or intentionally inflicted harm on the corporation; and

(2) Considering the director's course of conduct and the inadequacy of other available remedies, removal would be in the best interests of the corporation.

(b) A member, individual director, or member of a designated body proceeding on behalf of the nonprofit corporation under subsection (a) of this section shall comply with all of the requirements of subchapter XI of this chapter.

(c) The court, in addition to removing the director, may bar the director from being reelected, redesignated, or reappointed for a period prescribed by the court.

(d) Nothing in this section limits the equitable powers of the court to order other relief.

(e) If a proceeding is commenced under this section to remove a director of a charitable corporation, the plaintiff shall give the Attorney General for the District of Columbia notice in record form of the commencement of the proceeding.

- end of excerpt -

Addendum C
Definition Links

Due Process

Appeal

Suspension

Temporary

Removal

Termination

Free speech

Minority Opinion on the LP JC Appeal of Secretary Harlos

By Mary J. Ruwart

Endorsed in full by D. Frank Robinson and in part by Jim Turney

In writing this opinion, I am dissenting from the majority of my colleagues on the JC. This dissent is based on a different interpretation of our Bylaws which 1) did not define what "cause" for removal might be; and 2) gave the JC the instruction to put the burden of proof on the appellant.

The JC members were concerned about these issues, which we discussed at some length in executive session and e-mail exchange. We were frustrated on these two issues because we could not be sure what the bylaws actually intended. I believe this case might have been decided very differently had the bylaws been more specific. I am putting this up front in my opinion as delegates going to Reno might wish to consider revisions to the bylaws accordingly.

Burden of Proof on the Appellant

Since the bylaws put the burden of proof on the Appellant, you see language in the Moulton Majority Brief such as "Respondent submitted evidence in support of its allegation, while appellant submitted evidence rebutting the allegation. Because the Judicial Committee is deferential to respondent on factual matters, it reviews respondent's decision on sufficiency of the evidence under a clearly erroneous standard. There was not clear error."

What does this mean? A legalistic term, the "clearly erroneous" standard, says that where there is a finding of fact by a "court" (in this case the 2/3 of the LNC), that finding will be accepted by the appellate court unless it has a "definite and firm conviction that a mistake has been committed" by that court. In my opinion, this high standard was not the one that delegates had in mind when putting the burden of proof on the Appellant.

My take is that the delegates are trusting that the Respondent, in this case 2/3 of the LNC, is likely to be "in the know" and worthy of trust. Unfortunately, in my experience, this trust may not always be justified as I address in the section on "Hostile Work Environment."

What Is Cause?

Is cause what the LNC says it is or is it the more usual legalistic definition which includes, but is not necessarily limited to, criminal activity, failure to perform the duties associated with the office, and/or activities which produce demonstrable harm to the organization? When do such things rise to a level high enough for suspension to be permissible, given that our LNC officers are elected by the convention delegates? The way in which each JC member---in good conscience, I believe---answered these questions greatly contributed to the position they took in this case.

My take is that the delegates expected that the LNC honor their choice of officers elected by the convention. Of course, the delegates realized that mistakes can be made or they could be "played." Consequently, they allowed the LNC to suspend an officer "for cause."

I interpret "cause" in this case to be things like criminal activity, such as embezzlement; failure to perform the duties of Secretary, such as not producing minutes of LNC meetings; or behavior that caused demonstrable harm to the LP. The LNC's case basically rests on the third "cause," since it does not, as near as I can tell, indicate that the Secretary has undertaken criminal activity or failed to perform the duties of the office to which she has been elected.

Even given the deference that the bylaws instruct the JC to give to the Respondents, I did not find their case compelling. This might be due, at least in part, to the rather disorganized presentation of their case, which contrasted with that of the Appellant's better organized and more precise step-by-step counterclaims. Although I did not agree with every statement that Ms. Harlos made, I felt I could more easily follow her logic from her written submissions.

Specific Claims

The Respondents claim that "Ms. Harlos has engaged in a long-term pattern of behavior, both in official communication and via her monetized social media and YouTube platforms, which is detrimental to the party and its operations and purposes. These actions by Ms. Harlos have resulted in members of the LNC being unable to engage in respectful and professional public discussion before the body, making the committee dysfunctional for fear of bullying, harassment, and inaccurate characterizations to discredit and disrupt the committee's work." This quote also appears in Section 6.1 of the Moulton Opinion.

The first sentence of this paragraph claims that Ms. Harlos' behavior is demonstrated both in official communications and via her social media. However, all of the appendices listed in support for this claim are the Appellant's social media. I did not find any official communications in that list.

The Bill did indicate that in her social media, Ms. Harlos identified herself as Secretary of the LNC/LP. These are, in my opinion, biographical statements. Simply identifying oneself as holding a particular office in one's social media does not make that communication an "official" document of the LNC. Therefore, it appears that the Respondent's complaints only apply primarily, if not completely, to her social media.

This section next claims that Ms. Harlos' actions "have resulted in members of the LNC being unable to engage in respectful and professional public discussion before the body, making the committee dysfunctional for fear of bullying, harassment, and inaccurate characterizations to discredit and disrupt the committee's work." Is the Respondent really saying that the Secretary made LNC members so afraid of criticism in her social media that they could not function? If internal criticism on social media platforms that only LP insiders are likely to view is enough to cripple the Respondents on the LNC, then with all due respect to the considerable commitment of time, money, and effort its members have made, perhaps they should consider alternative service to the LP. Do the Respondents really want to us to believe that "mean words" are enough to paralyze them? If so, how does our LNC expect to stand up to State, which bolsters any criticism that it has with retaliations of physical force?

I find the claim that a colleague's criticism can paralyze the LNC as highly unlikely. It is extremely disturbing for the future of the LP if a lone person can make the LNC "dysfunctional" solely with his or her criticisms, however harshly stated.

The Respondents didn't claim that the Appellant's criticism was untrue, although it does claim "inaccurate characterizations," which are presumably a matter of opinion. Since "bullying" and "harassment" may also fall into that category, I fear that the Moulton Opinion in this case is going to have a chilling effect on future LNC members who may want to expose questionable practices of their colleagues. Credible claims could be made that some of the Respondents could be accused of similar "harassment" language.

The JC asked the author of the Bill of Particulars, Dr. Laura Ebke, to identify timestamps from the 16 hours of video submitted that were most relevant to their case. She suggested instead that we "sample" the videos, making it unclear exactly where the Respondent's concerns lay.

Naturally, criticism is unpleasant, perhaps more so when it comes from those closest to you, both personally and professionally. I certainly do not endorse the harsh way in which Ms. Harlos criticizes those with whom she disagrees. Should the convention return her to the LNC, I would advise her to seriously consider being more diplomatic, as "mean words" are not conducive to teamwork, which is what the LNC needs for maximum efficiency. LNC members are only human and will tend to discount the good works and suggestions of those who criticize them, especially when that criticism is delivered harshly.

The majority opinion claims that the Secretary did indeed violate Section 2.01 Subsection 5 of the Policy Manual (see, for example, Section 6.5 of the Moulton Opinion). Even if this were true, it does not, in my opinion, rise to the level of cause for suspension unless it has created demonstrable harm.

Hostile Work Environment

However, the Respondents do make the claim that Ms. Harlos created demonstrable harm. At the end of the Bill of Particulars, the LNC summarized their reason for suspending Ms. Harlos from her secretarial office. At the end of the Bill, the case is summarized as follows:

In Summary:

The result of this chronic pattern of misconduct by Ms. Harlos has created a hostile work environment within the LNC, LP Staff, and LP Affiliates. Her actions have resulted in the loss of established LP members, LNC officers, LP employees, and long-time donors. She has recklessly and willfully harmed the perception of the party and has become a liability to the party's public image. Her profiteering using her position has undermined the ethics and reputation of the LNC as an all-volunteer body. Her continuation as Secretary of the LNC would be harmful not only to the LNC and its members, but to the party as a whole.

In the summation and hearing, the LNC indicated that "Ms. Harlos has created a hostile work environment within the LNC, LP Staff, and LP Affiliates" by her "chronic pattern of misconduct." Most, if not all, of this alleged misconduct apparently occurred outside of actual LNC meetings in her social media.

Employers are prohibited, by law, from permitting a "hostile work environment." However, LNC members are not employees. Instead of being employed and paid, LNC members are volunteers as well as donors. They volunteer a considerable amount of their time to do LNC business. They essentially donate the money for the expenses associated with attending meetings, a non-trivial expense. Indeed, it is not unusual for LP members to refuse to stand for election to the LNC because the financial cost is significant. Others who are elected sometimes ask for help from other LP members to cover their expenses.

Who then is the employer who must prevent a hostile working environment in the LNC? The closest thing to an "employer" would be the membership whose votes put the LNC members in office; they can "fire" an LNC member by not re-electing them.

I rather doubt that "hostile work environment" was in the mind of delegates when they gave the LNC the power to suspend an officer for cause. Indeed, some division is to be expected; we have regional reps because of the expectation that different regions will have competing interests, which can undoubtedly cause friction.

In my 3 terms on the LNC, I found that board to be the essence of a hostile working environment. Backroom deals were made by old-timers, but presented to the LNC by gullible new comers to hide their true source; Roberts' Rules of Order were used to bludgeon those less knowledgeable into accepting unsavory maneuvering; petty conflicts seemed to take up most of our precious meeting time; officers violated their fiduciary responsibilities to attack minority representation on the LNC, with the majority and at times, the supermajority, willing to look the other way. Some of these violations were legally actionable, but the affected minority declined to prosecute to avoid bad publicity and cost to the Party. The perpetrators were not disciplined because the affected minority fell into all 3 of the unpopular categories listed below.

In my terms on the LNC, members frequently made disparaging remarks about so-called "povertarians," who spent their time getting us ballot access or running state parties. These individuals were shamed by their better paid colleagues because they had traded a life of affluence for a life of service to the cause. When, as a result, they couldn't afford a life-time membership, they were ridiculed.

Christians were thought to be illogical, likely due to the judgmental influence of atheistic Ayn Rand, who was instrumental in bringing old-timers like myself into the libertarian movement. Radicals were also condemned, as a moderate, Republican "lite" image was thought to be preferable to voters. A large percentage of the LNC members that I served with fell into the category of affluent, atheistic, and Republican "lite" advocates.

During my 2008-2010 term on the LNC, I documented back-room deals, actionable violations of fiduciary duty swept under the rug, etc. The amicus brief that the JC received from Justin O'Donnell (attached as Exhibit EE in the CAH file-Second Filing Supplemental Exhibits) suggests that not much has changed.

Mr. O'Donnell chose not to seek reelection to the LNC after 2 terms due to the "toxic work environment and petty interpersonal power struggles" on the LNC. His brief, taken at face value, also indicates that some members of the LNC have been looking for ways to get rid of the Appellant and those with opposing ideological positions for some time. To accuse the Appellant of creating a hostile work environment is, in my experience, "the pot calling the kettle black."

Harming the Libertarian Party

The Summary in the Bill of Particulars asserts that the Secretary's "actions have resulted in the loss (emphasis mine) of established LP members, LNC officers, LP employees, and long-time donors." If this is indeed the case, documentation should be readily available.

For example, the Respondents could have offered examples such as the following:

1. An anonymized list of donors who stated, verbally or in writing, that they would no longer contribute to the Party because of the appellant.
2. An anonymized list of employees who left because of Ms. Harlos.
3. An anonymized list of LNC officers who have been lost because of Ms. Harlos.

The JC might have asked to vet this list with its particulars under Executive Session to preserve confidentiality and verify the Respondent's claims, but I suspect those who were "lost" would have come forward willingly as we were considering Ms. Harlos' appeal. As near as I can tell, no such documentation has been provided by the Respondents.

The Respondents' summary asserts that the appellant has harmed the perception, presumably the public perception, of the party as well but has provided no comments from the public to back up their assertion. The assertion may be true, but supporting evidence appears to be lacking.

The summary states that the Secretary's "profiteering" has undermined the ethics and reputation of the LNC as an all-volunteer body. Sections 6.2 and 6.4 of the Moulton Opinion deals with concerns that, by asking for donations to support her personal expenses, Ms. Harlos has an actual conflict of interest. She is accused of stirring up controversy in order to increase her viewership and subsequent donations. However, stirring up controversy is not necessarily a bad thing.

Even JC members who voted for the Respondents did not all agree that Ms. Harlos' actions constituted an actual conflict of interest. Presumably, an LP officer in financial straits should be able to ask for help from her colleagues without reprisal.

Even if one sides with the Respondents, does asking for money when an officer is in difficult financial straits constitute "demonstrable harm" to the LP? If so, I saw no evidence of this harm other than the unsupported assertion that the ethics and reputation of the LNC as an all-volunteer body has been undermined.

The Whistleblower Defense

The Appellant claimed that the motions to remove her resulted from her uncovering malfeasance by the LNC chair, Mr. Bishop-Henchman, during the fight between factions of the New Hampshire affiliate. However, as indicated in Mr. O'Donnell's brief, plans to suspend/replace the Secretary pre-dated this conflict. I also understand that Joe Bishop-Henchman had planned to resign from the LNC prior to the investigation into New Hampshire by the LNC-appointed investigative committee, which included Ms. Harlos. These factors argue against her claim of "whistleblower" status.

That said, the timing of the actual motions to suspend were apparently triggered by Mr. Bishop-Henchman's desire to suspend the Secretary prior to his leaving. The timing coincides with the LNC's Investigative Committee's findings of which Ms. Harlos was a part. Two motions to suspend her were ruled out of order by the then-acting chair and had no Bill of Particulars associated with them. Only

when the third motion was made with a Bill of Particulars did the suspension motion pass. I am appalled that multiple LNC members who wished to suspend the Secretary felt comfortable doing so without a formal "charge" of any kind.

Clearly, the timing of these motions to suspend obscure the issue of whether these motions were indeed due, at least in part, to the Appellant's investigative actions and/or Mr. Bishop-Henchman's desire to oust the Secretary. More concerning from my perspective, is that at least some of the LNC members have been trying to suspend Ms. Harlos for some time and should therefore have presented more compelling documentation.

NAP Violations

The so-called "pledge" that LP members sign was indeed intended to deflect any governmental concerns that the LP supported violent overthrow. However, the definition of the NAP philosophy and its application has been detailed by many authors, myself included.

Perhaps I shouldn't have been surprised to hear that the Respondents felt that Ms. Harlos' "mean words" rose to the standard of a NAP violation. After all, some LNC members with whom I have served over the years have tried to eliminate "Remain the Party of Principle as We Grow" as one of our key goals. Those who supported this elimination have repeatedly claimed that the LP should not educate new members in its principles, but instead leave that crucial mission to The Advocates for Self-Government or other libertarian non-profits.

As a result of ignoring internal education, as many as half of our candidates do not seem to recognize, or at least not promote, the NAP as the foundation of our platform. Does our leadership have a misunderstanding of the NAP as well? If the LP doesn't remain the Party of Principle, what good will it do to elect Libertarians?

Neither the Moulton Opinion or the Mattson Opinion endorse the Respondents' position on the NAP. *No one should construe the JC's decision as such an endorsement.*

Summary

The Respondents made multiple accusations concerning Ms. Harlos' conduct that were not well-documented/supported or do not rise to what I consider justifiable cause. Was this due to a deficient presentation on the part of the Respondents or a case lacking in substance? Because I cannot easily differentiate between the two, I cannot in good conscience support the Respondents' case.

Should we even suspend officers for anything other than criminal activity, failure to perform the duties of their office, or demonstrable harm to the LP? These are questions that the delegates to the next convention will hopefully resolve by addressing what they consider "cause."

The Amicus Briefs that the JC received ran roughly 4-to-1 in favor of Ms. Harlos. Given such strong support, it would not surprise me if she is returned to the LNC. Should that happen, I hope that she will make her critiques of her colleagues with more objectivity and less profanity when disagreements arise.

The Respondents have claimed that Ms. Harlos has made them unable to conduct business. If this was truly the case, my expectation is that the LNC will now go all out and fight against the most tyrannical threat of our time: vaccine mandates.

If our government can dictate what drugs that we MUST put in our body, it is game over for freedom. As a research scientist quite familiar with what pharmaceuticals can do, I am well aware that mandated shots will give our oppressors virtually total control. It's now or never.

Such a fight is the best opportunity we've had to expand the Party in a long time, perhaps ever. More than half of Americans believe these mandates are government overreach; they are ripe to listen to the rest of our message, especially if we become leaders in protecting them from this bodily intrusion. Americans interested in health care freedom have for decades been our best opportunity for growing the LP, but we've let it slip through our hands. Let's set aside our differences and get to work!

BEFORE THE JUDICIAL COMMITTEE OF THE LIBERTARIAN PARTY

Date: 9/10/2021

Petitioner: Caryn Ann Harlos

Subject: Appeal of the LNC motion of 9/5/2021 to suspend and remove Petitioner asLNC Secretary, as per Article 6, Section 7 of the Bylaws.

Interested Parties: Members of the LNC, Joe Bishop-Henchman, as he is alluded to inthe in the initial complaint against the Petitioner.

Relief requested: Voiding of suspension motion and reinstatement as LNC Secretary.

Committee Jurisdiction: Article 8, Section 2, subsection b, regarding suspension of officers, and Article 8, Section 2, subsection d, regarding voiding of National Committeedecisions.

Appearing on Behalf of Petitioner: DL Cummings

Petitioner's Second Notice of Filing Supplemental Exhibits

Petitioner hereby files the following Exhibits:

BB. Resolution of the Libertarian Party of Colorado

CC. Resolution of the Libertarian Party of Minnesota

DD. Letter from the Libertarian Party of New Hampshire

EE. Letter from Justin O'Donnell

EXHIBIT BB

LIBERTARIAN PARTY OF COLORADO

Resolution Regarding Ms. Caryn Ann Harlos

09/14/2021 / By LP Colorado / Resolutions

Whereas, Caryn Ann Harlos has served honorably as Secretary of the national Libertarian Party (LP); and

Whereas, Ms. Harlos was re-elected by Delegates in 2020 by running on an open and unambiguous campaign promise to oppose and root out corruption from within the Party ranks; and

Whereas, Ms. Harlos has fulfilled that campaign promise by exposing recent corruption in LPNH that implicated LP National Chair Joe Bishop-Henchman, as confirmed by the recent report of the special investigative committee that revealed that the chair "guided, and likely initiated, this strategy" of usurpation; and

Whereas, the current Libertarian National Committee (LNC) has spent more energy and devoted more resources to removing Ms. Harlos from her elected position than it has

opposing blatant totalitarianism resulting from the ongoing illegal COVID-19 tyranny state; and

Whereas, that illegal COVID-19 tyranny state includes stay-at-home orders, forced injections, campaigns to institute vaccine passports, forcible closure of various sectors of the economy, imposition of mask mandates, fascism, medical Jim Crow, enactment of state restrictions against public assembly and religious worship, and other outrageous government lunacies; and

Whereas, the "bill of particulars" removal motion against Ms. Harlos wrongly characterizes criticism of fellow LNC officials as "harassment," inexplicably purports that monetizing libertarian content is somehow immoral and "detrimental to the Party," and features a list of minor offenses of decorum that could apply to, yet not prosecuted against, many members of the same body; and

Whereas, the written complaints against Ms. Harlos also raise the absurd claim that the Secretary violated the non-aggression principle through public criticism of her peers, effectively redefining and perverting the cornerstone maxim of libertarian philosophy, the Non-Aggression Principle, to include non-aggressive expressions of her own well-founded opinions; and

Whereas, by attempting such redefinition and perversion, the complainants seek to embrace completely anti-libertarian positions of censorship and cancel culture which undermine the fundamental core of the Party and libertarianism, and could lead to destroying the Party;

Therefore,

Resolved, the Libertarian Party of Colorado expressly rejects the suspension and attempted removal of Caryn Ann Harlos as National Secretary by the LNC; and

Resolved, the Libertarian Party of Colorado insists that the LNC shift its attention and resources from removing duly-elected national officers for personality conflicts and bogus "charges" to opposing the evil of the state and its widespread propensity to violate individual rights in every corner of the world, especially in this current insane time.

EXHIBIT CC

WHEREAS The Libertarian National Committee expressed nearly zero opposition to tyrannical lockdown measures during 2020, despite the vocal protestation of Secretary Harlos;

WHEREAS the Libertarian National Committee neglected speedy investigation of former chair Joe Bishop-Henchman's corruption and malfeasance, leading to the inability to recover key evidence in the New Hampshire investigation, despite the urging of Secretary Harlos;

WHEREAS the process used for the removal of Secretary Harlos had minimal notice, lacked basic due process, a very important libertarian principle;

FURTHERMORE, during the process of removal at the September 2021 LNC meeting, members aligned with Secretary Harlos were deliberately excluded from the ability to vote;

BE IT RESOLVED that the Libertarian Party of Minnesota Executive Committee hereby expresses NO CONFIDENCE in the Libertarian National Committee.

Passed by a vote of 8-2 with the undersigned voting in the affirmative

Justin Jelinek - LPMN Secretary
Sam Wipplinger - Chair Albert Lea Area Libertarians
Dave Johnson - Chair CD6 Libertarians
Jake Hemingway - Chair Beltrami County Libertarians
James Jenneman - LPMN Executive Committee At-Large
Charles Kuchlenz - LPMN Executive Committee At-Large
Dr. Justin Merritt - LPMN Executive Committee At-Large
Amos Webskowski - LPMN Executive Committee At-Large

EXHIBIT DD

Libertarian Party of New Hampshire

497 Hooksett Road, #231
Manchester, NH 03104

Members of Judicial Committee,

We write to you today in regards to Caryn Ann Harlos. The New Hampshire affiliate owes a tremendous amount of gratitude to her and her unwavering set of principles. During our most trying time here in New Hampshire, few people set out to find the truth in what had transpired, and many were quick to write us off in our greatest time of need. This could not be said about Caryn Ann. Even though she had stated that she was friends with one of the parties in the dispute, it was evidently clear that her principles were guiding her, and that upholding those principles was first and foremost. Had it not been for her actions and her devotion to these principles, the outcome of our affiliate may have been very, very different. One could even argue that without her, the underhanded deeds that were uncovered by the National Committees own Investigative Committee never would have come to light. Not only does NH owe her our gratitude, in our opinion the LNC does as well. As “The Party of Principle” we should celebrate her actions which eventually brought out the truth.

Some might say that her principles sometimes supersede her decorum, and maybe sometimes this is the case. We would rather have a truly principled member like Caryn Ann in the fight for freedom than a half-hearted, well-behaved, Libertarian myrmidon. Our current situation in our country actually requires the fortitude that she possesses. Caryn Ann’s tireless work ethic, the long hours, and the principles on which she stands, set her apart from almost anyone else in this party. To remove an asset like Caryn Ann from her duly elected position would be a tragedy for liberty and this party. This is why the New Hampshire affiliate of the Libertarian Party stands behind Caryn Ann, and we expect you will as well.

In Liberty,

Nolan Pelletier, Interim Chair, LPNH
Sean Brennan, Treasurer, LPNH
Stephen Nass, At-Large, LPNH
Sean Dempsey, At-Large LPNH, Lifetime Member LP
Mickey Mullin, Interim Secretary, LPNH

EXHIBIT EE

to mary

Dr. Ruwart,

I'm sending this email to you in the hopes that you and other members of the Judiciary Committee may find its information valuable in considering the appeal of Secretary Harlos' suspension from the LNC.

I believe this motion has been in the planning stages since long before any of the attempts were made by members of the LNC to remove Ms. Harlos, and I believe their motivations negatively color the righteousness of their actions. Mr. Longstreth and other members of the board have publicly claimed that the motion was a recent development, and based purely on the conduct of Ms. Harlos, however, this is simply untrue.

I had served as the Region 8 representative to the LNC for the previous 2 terms and chose not to seek reelection due to what I perceived as a toxic work environment and petty interpersonal power struggles hindering the ability of the LNC to conduct the business of the Party. In hindsight, I do recognize my own fault for some of these actions, as I had become so frustrated with the disagreement of the board, that I had begun working with Joe Bishop-Henchman and Richard Longstreth on a plan to replace members of the board as early as the fall of 2019. In hindsight, I regret my participation in these plans, but History cannot be changed.

But at every stage of our planning in 2019, Richard Longstreth was insistent that he would replace CAH as secretary, and do a better job than her. He and Mr. Bishop-Henchman were the "ring leaders" of a group that met regularly to discuss options on how to remove ideological opposition from the LNC in the event that convention elections did not go their way. Present in the last of these meetings, held in Orlando following the Fall 2019 LNC meeting, aside from myself, were also then LNC Members Elizabeth Van Horn, Erin Adams, Paige Sexton, and non-LNC members Andy Craig, and Ethan Bishop-Henchman. We had also approached Ms. Bilyeu about running for Vice-chair as part of a slate and informed her of our plans.

While this testimony may not be conclusively damning to any individual, I believe that it should highlight the hypocrisy and dishonesty of some involved in the proceedings, and lend credence to the fact that this was a corrupt backroom proceeding, which was in the planning stages for years before being carried out on whimsical charges.

I've attached a screenshot of a public Facebook post where I called out Mr. Longstreth for his lies and hypocrisy, to show that I'm willing to stand by these claims publicly, and will make them on the record if requested.

I would appreciate it if you would forward this correspondence to the rest of the Judicial Committee for consideration of this testimony as you weigh the evidence in Ms. Harlos' appeal.

In Liberty,
Justin O'Donnell
Former Region 8 LNC Representative
Lifetime Member, Libertarian National Party
Lifetime Member, Libertarian Party of New Hampshire

Libertarian Party Judicial Committee

Caryn Ann Harlos vs. Libertarian National Committee

Opinion by Thomas Arnold

In the matter of the appeal of Ms. Harlos to the Judicial Committee concerning her suspension, I abstain.

I cannot in good conscience take a side in this matter. I hope that the delegates that elected me to this office find my reasoning as representative of their trust.

As to the LNC, I find that while the process, and cause might be considered valid, the bill of particulars was sloppily done, and did not conclusively present the case. Further, the behavior of several members of the LNC were just as disruptive to the work environment as that of the appellant.

The appellant has offered a huge body of information in her defense. And while the Judicial Committee has gleaned much from it, my decision to not support Ms. Harlos' reinstatement is based on both her actions prior to suspension, and testimony in the hearing. I found many of her claims concerning the LNC, and rebuttal of the cause for suspension disingenuous. And cannot support her appeal.

There is much I could say but refrain for the sake of brevity. I have several suggestions to the LNC, future Judicial Committees, and future delegates of changes in wording, procedure, and bylaws. And would be glad to discuss them at some latter time.

Peace, Love, and Liberty

Thomas Arnold