

TO: Members of the Judicial Committee of the Libertarian Party

FROM: Blay Tarnoff, Esq.

DATE: October 18, 2021

RE:

Caryn Ann Harlos, *Appellant*
v.
Libertarian National Committee, *Respondent*

Amicus Brief

The merits of the arguments made by litigants notwithstanding, and assuming *arguendo* that all charges against Ms. Harlos are entirely justified, the Judicial Committee is nevertheless legally bound to and therefore must overturn the decision of the LNC, for having failed to follow the disciplinary procedures detailed in Robert's Rules of Order for suspension of an officer. Such finding not being based on the merits of the case, the LNC would then of course be free to bring the same charges and specifications again.

Appellant has raised this defense, but has not raised the precise following argument in support, which appears dispositive.

Appellant has raised the objection that the bylaws are silent with respect to the disciplinary procedure to be employed in suspending an officer, that Robert's controls where the bylaws are silent, and that the disciplinary procedures detailed in Robert's were not followed.

Respondent counters that the disciplinary procedure *does* appear in the bylaws, namely the requirement of a 2/3 vote by the LNC, and that such procedure takes precedence over Robert's.

Respondent's argument cannot be supported.

As claimed and admitted by Respondent, the entirety of the "disciplinary procedures" specified in the bylaws are as follows: "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." Bylaws Article 6 (7). This sentence is purported by Respondent to supplant the approximately 17 pages of substantive disciplinary procedure detailed in sections 61, 62 and 63 of Roberts Rules of Order (12th edition) which would apply in this case.

If Respondent's argument were correct, the only basis for appeal to the Judicial Committee would be whether a vote of the LNC was taken and the 2/3 majority requirement met, a review that could be performed ministerially. However, in specifying that the Judicial Committee "shall notify all interested persons, which persons shall have the right to appear and present evidence and argument" and that "at the hearing the burden of persuasion

shall rest upon the appellant" (*id.*), the bylaws make absolutely clear that there is much more to the Judicial Committee's review than simply whether a vote was taken and a specific majority met.

Respondent may argue that the words "for cause" obviate this argument, as they would require the Judicial Committee to determine whether such vote was truly made "for cause". Respondent has not raised this argument, but even so, it cannot be supported. The Judicial Committee must rely upon a fair investigation of the facts in order to make such "for cause" determination. What would constitute a "fair investigation" of the facts? The bylaws do not specify; Robert's does.

Without a fair investigation of the facts, the Judicial Committee is in no position to determine whether the suspension was truly "for cause". The Judicial Committee cannot hear all evidence anew, which would not only fatigue the judges and render pointless the initial vote of the LNC, but would require the Judicial Committee itself to determine what would constitute and then carry out such reasonable and fair investigation. Such procedure *could* be spelled out in the bylaws, but since it is not, the procedure detailed in Robert's is what the bylaws demand.

The Judicial Committee should therefore remand this case to the LNC for investigation and trial as specified in Robert's, after which it would be in a position to conduct its appellate review. However, since the Judicial Committee does not appear to have been granted the authority to remand cases, it must overturn the decision of the LNC on procedural grounds, with the recommendation that the LNC re-file the charges and specifications against Ms. Harlos and conduct its investigation and trial as detailed in Robert's Rules of Order.

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