

Libertarian Party Judicial Committee

“Friend Of The Court” Amicus Brief

On Caryn Ann Harlos's appeal of the LNC's suspension of her as
Libertarian Party secretary

Oct. 22, 2021

Mary Ruwart (chair)
D. Frank Robinson
Vermin Supreme
Chuck Moulton
Alicia Mattson
Tom Arnold
Jim Turney

Dear Libertarian comrades,

A few thoughts on the case before you.

You've already seen legalistic arguments from the appellants and respondents, and I expect you're currently receiving many more.

I found Caryn Ann Harlos and Ken Moellman's arguments on procedure, due process, interpretation of the rules, and so on quite compelling, and hope you will as well. I see little I can add to what they have so eloquently stated.

All I hope to offer with this submission is a brief look at another perspective to consider if you should find the legalistic arguments made in support of the appellant unpersuasive.

Just as it has been said that "war is too important to leave to the generals", so I believe that law (or the judicial process) is too important to leave to the lawyers (or to strictly lawyerly arguments). Accordingly, I would like to ask you to consider the larger question of *what outcome in this case best serves the interests of the cause of freedom*.

Before addressing that however, I'd like to draw your attention to an omission I noticed in the process of reading the materials submitted by the appellants and respondents.

Among the exhibits (Exhibit E) is a page titled "CUMULATIVE POTENTIAL CONFLICTS OF INTEREST 3/10/18", which lists the conflicts of interest declared by 22 members of the Libertarian National Committee at the time.

I must inform you however that the list on this page is **not** in fact a cumulative list of all the potential conflicts of interest declared by contemporaneous LNC members. In March 2018, I was serving as an at-large representative on the National Committee, but my name and self-reported conflicts of interest do not appear on the list. I had declared the following conflicts of interest*:

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- At-Large Alternate, Libertarian Party of California Executive Committee
- Outreach Director, Libertarian Party of San Francisco
- SWOP-Bay National Representative, Sex Workers Outreach Project
- Founder, Grassroots Libertarians Caucus
- Member, LP Radical Caucus, Outright Libertarians, LP Sunshine Caucus
- Editor, [IndependentPoliticalReport.com](http://IndependentPoliticalReport.com)
- Administrator of various email lists
- Vice-Chair, Libertarian Party of San Francisco
- Member, Libertarian Party Audacious Caucus

Perhaps most relevantly, I have a conflict of interest between my support for the Libertarian Party and my support for the larger libertarian movement of which it is a part. Specific individuals and organizations can and often do go astray, but the libertarian movement, defined as all the individuals consciously working for freedom at any time, is essentially right by definition. Therefore, as an activist in the historic struggle for worldwide freedom, my highest allegiance will always be to the movement and the cause for which it stands, and not to the narrow interests of any particular group. For reasons that should be obvious, I hope that all of us on the LNC will have this same conflict of interest, and I encourage my fellow members to join me in formally declaring it, as a signal that you hold your commitment to freedom ahead of any narrower parochial interest.

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*Technically I believe the "conflicts of interest" declared by LNC members are for the most part actually *potential* conflicts of interest – until another loyalty, obligation, or whatever *actually comes into conflict* with one's loyalty, obligation, etc., to the LP, there is no conflict – but present LNC practice is to simply refer to them as "conflicts of interest" with no qualifier.

There may be other contemporary LNC members whose listings are missing from the list in the exhibits as well, but I couldn't say for sure without checking to see exactly who was on the committee at that time.

The omission I noticed is in a sense serendipitous however, because my LNC conflict of interest statement which I have provided for you above is not unrelated to the argument I wish to make to you here.

At the risk of appearing to greatly digress, allow me to say a bit about law versus spirit or underlying goals in relation to the United States Constitution.

The "inalienable rights" to "life, liberty, and the pursuit of happiness" set forth as the rationale behind the American Declaration of Independence are not explicitly detailed or even in most cases mentioned by the Constitution. It simply sets forth a limited list of things the federal government can do, while its Bill of Rights balances this by listing a few things that government may **not** do. It does not pretend to offer an exhaustive list of prohibitions on State power however, as the 9th and 10th amendments make clear.

Libertarians generally advocate for upholding the Constitution. But although we can see the advantages of the "rule of law" over the "rule of man", the main reason we want the document upheld is not "Because it's *The Law*TM and we believe governments should always consistently follow their laws", but rather ***because it is in the interests of freedom***. We can see that the U.S. government as described by the Constitution is

much more respecting of freedom and individual rights than that government as it exists today.

Where government laws or policies are anti-freedom however, we want them abolished even when they **are** perfectly in accord with the Constitution. The Constitution permits (though does not require) the U.S. government to operate the Postal Service, for instance, but our Platform demands an end to it, calling for “the abolishment of... all federal programs and services not required under the Constitution.” (plank 2.4)

Libertarians don’t look to the *Constitution* to tell us whether the USPS should exist or not; rather we look at larger libertarian questions – Is it voluntary? Would society be freer with, or without such an entity? Is it in accord with our belief in free markets and our understanding of how such markets work?

We might also look to the *spirit* of the Constitution – the larger purpose, or purposes, that, at its best, it was intended to serve. As it happens, a short list of those purposes appears in the document’s preamble, capped by “*secur(ing) the blessings of liberty to ourselves and our posterity*”.

In instances where we perceive that doing what is allowed by the Constitution – e.g. government maintaining a Postal Service – will result in more harm than benefit to those “blessings of liberty”, we seek **not** to uphold such actions taken in accord with the letter of the document, but rather to overturn them by any non-aggressive means necessary.

When 19th century proto-libertarian Lysander Spooner set up an independent company to peacefully compete with the Postal Service in the delivery of mail, the government initiated force to put him out of business. I don’t know whether the authorities at the time used this argument at the time to justify their shutting down Spooner’s mail service, but it seems to me they *could* have made a respectable argument (from a narrow, legal perspective!) if they’d said:

“Article 1, Section 8, of the Constitution, which authorizes us to establish post offices, goes on to authorize us to ‘make all laws which shall be necessary and proper for carrying into execution the foregoing powers’. Given that our government Post Offices would never be able to compete with independent operators providing a similar service, to establish them it is necessary and proper for us to outlaw private businesses like Mr. Spooner’s.”

If a persuasive countervailing *legal* argument was not found to exist, would not a hypothetical Libertarian Party of the day have been justified in turning to underlying principles, the spirit of the Constitution itself, and the values and intentions of the men who wrote and ratified it, rather than ceding the argument and granting legitimacy to an action harmful to the cause of freedom?

For most Libertarians, valuing and caring about freedom – individual rights and the responsibilities that go with them – preceded our membership in the Libertarian Party. We were attracted to the party *because* we saw that it stood for these things.

Our bylaws, of course, don’t really go into all that. Reading them out of context, a person might not necessarily get much of a sense of what we believe. Standing alone, they, like Roberts Rules of Order, are technocratic tools that can be used for ill as well as for good. Applying them wisely may require using them not just as written, but with the purpose in mind *for* which they were written.

The *spirit* of our Libertarian Party, the reason *why* we have an office, and staff, and ballot access petitions, and bylaws, and all the rest, is to further our shared goal or purpose, famously set forth in the Libertarian Party's Statement of Principles, to achieve "a world set free in our lifetime".

Even if an action appears to be – at least according to one interpretation – compatible with the letter of our bylaws, we should ask, is this action in the broader interests of the Libertarian Party, the larger libertarian movement of which we are a part, and the cause of freedom for which it stands?

If a decision-maker perceives that it is not, then similarly to our hypothetical 19th century LP, I believe that decision-maker ought to seek to overturn the action, referencing the larger, underlying purpose and spirit of our bylaws, and the party as a whole, as necessary. ***We ought not simply take the text of the Libertarian Party's bylaws as the sole guide (with Robert's Rules of Order filling in any perceived gaps) to how the party and its leadership bodies ought to make important decisions.***

Having served two terms on the Libertarian National Committee with her, and continued to follow the LNC email list since my second term expired at our 2018 convention, I can say that despite whatever criticisms can be made of her communication style, I don't know of anyone in the party leadership whom I would trust more than Caryn Ann Harlos to speak out and stick their neck out for right actions and right principles when they need championing or defending, and doing so may feel uncomfortable or carry risks.

Even her detractors can't dispute that she is a passionate advocate for freedom and a tireless worker who accomplishes a great deal for the Libertarian Party, including (to list just a few things that I'm aware of off the top of my head):

- Being probably the strongest defender of the crucial value of transparency in our leadership's operations in the time since I've been on the committee
- Leading the efforts to safeguard and organize our history via the Historical Preservation Committee, thereby helping us stay connected with, and faithful to, our party's original spirit and purpose – something that many organizations tend to drift away from the longer they've been around, a fate that has obviously and tragically afflicted the once relatively pro-freedom Democrat and Republican parties and turned them into the dangerous vehicles for statism and self-serving opportunism that they are today;
- Resurrecting the LPedia.org website as a public, crowd-sourced repository for that history – something I initially brought to the LNC's attention as a project worthy of our action, but that Caryn Ann had the organizational talent, drive, and perseverance to make happen.
- Attending more state conventions than just about anyone else
- Bringing in more memberships and renewals than just about anyone else
- Writing probably the most thorough and detailed reports for her region as a regional rep that have ever been seen on any LNC
- Writing numerous articles for LP News
- Investigating on her own initiative the recent dispute in the New Hampshire state affiliate and providing critical information as a whistleblower to the LNC, supporting the eventual official investigation of the matter and its findings in accord with what I believe

most Libertarians perceived to be the correct outcome, but one which might not have happened without her leadership

- Instigating and bringing to fruition, in the face of apathy or non-action by most of the committee, the party's current "Already Against the Next Mandate" campaign
- Studying and giving talks on the history of the LP's pledge and Statement of Principles that are the heart and soul of what we stand for
- All the while, engaging in activism at the state and local level, including running for office, and winning a legal battle to protect the right of voters in Colorado to take photos of their own election ballots

I recently saw one person criticizing Caryn Ann Harlos for what they said was having "made the Libertarian Party her entire life" which they alleged made her prone to viewing her suspension as an "existential attack" and over-reacting. Even if this were a fair criticism – and given that she seems to be happily married and until recently held down a full-time paid job, that seems dubious – do we really want to fault someone for putting **too much** time, energy, and passion into supporting, working for, and building the party?

Is it in the interests of the Libertarian Party, the larger freedom movement of which we are a part, or the cause of freedom for which it stands, for arguably the most outspoken champion on the LNC of forcefully championing our principles, to be removed by a small group of fellow leaders, when it appears most ordinary party members who have an opinion on the matter pretty clearly don't want to see this happen?

If it were ordinary party members acting to remove the secretary, that would be a different matter. As a matter of sound bottom-up governance, I believe it ought to be **easier** for the members to remove a member of the leadership from office, but **harder** for a group of other leaders to do so.

Do any of Caryn Ann Harlos's actions cited in the complaints against her amount to violations of the Non-Aggression Principle? I do not believe so. While I don't like a lot of drama myself, and readily see how some of the targets of her comments could feel abused, I think it would quite harmful for the Libertarian Party to officially take the position that a person's language on social media, or on the LNC list, no matter how much it may violate "decorum" or how much of a "drama queen" the person was being, constitutes aggression, even if some of their colleagues experience it as abusive, slanderous, and hurtful. Libertarian theory still seems far from coming up with a satisfactory theory of what some have called "microaggressions", or a consistent approach to recognizing and addressing them without opening the door to authoritarian government "solutions" worse than the wrongs they seek to right.

It is, if anything, even harder to see the secretary making money via platforms like YouTube by talking about stuff related to her party position and access to information, as fraud or harmful to the party. Money is of course fungible, making the distinction between donations paying for a mortgage and donations paying for an airline ticket to attend an LNC meeting somewhat moot. Even donations earmarked to help her pay for her living situation are indirectly financing her trips to attend conventions and LNC meetings, and allowing her to devote a very significant chunk of her life – even if not all of it! – to the Libertarian Party. Her pitches to raise money were done in an open and above-board manner. In one of her posts included in the exhibits, she even offered

to share details of her bank account to demonstrate how the funds would be used. It would be one thing if Caryn Ann were trying to suppress *unpaid* access to information about the LNC and its operations in order to induce people to pay to access her posts and learn what was going on, but as a strong champion of transparency, and big sharer (some would say over-sharer!) of information via free channels of communication like Facebook and the public LNC list, that's hardly been the case.

I believe the phrase "for cause" in our bylaws should be evaluated primarily not in light of employment law, or what Robert's Rules of Order says, but in terms of what *actually harms our cause*. Looking holistically at Caryn Ann Harlos's actions while serving on the LNC, I believe she has done us far more good than harm.

I regret not having more time to think about and expand on some of the ideas and points presented here, or to present them in as complete and polished a manner as I would have liked, but alas! I am running up against the deadline for submission.

Thank you for giving this matter your thoughtful diligence, and I hope that I have given you some useful food for thought. If we're all lucky, perhaps the two sides will manage to reach some mutually acceptable – or at least not too *unacceptable* – mediated solution, as per Mary Ruwart's heartfelt plea expressed during the hearing. If not, I hope whatever decisions you reach will be wise ones. Just please remember that what's best in the eyes of The Law™, or even what is most in accord with whatever rules we've bound ourselves to, isn't necessarily what's best from the perspective of advancing the cause of freedom.

May we all succeed in keeping that as our primary focus during these fraught times!

Love & Liberty,

(((starchild)))

Chair, Libertarian Party of San Francisco*

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*The views expressed here are my own