An Amicus Brief Concerning the Suspension of Caryn Ann Harlos, Appellant

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I. Introduction

As you all know, the matter for your consideration is the suspension of Caryn Ann Harlos (appellant), who served as the national Libertarian Party Secretary prior to her removal by the Libertarian Party National Committee (appellee) on September 5, 2021. As of the current date, both parties have presented exhaustive cases and much has been said about the facts and the law on both sides.[1] According to the national Libertarian Party bylaws, the Judicial Committee has been granted power by the delegates of the party to consider cases related to the suspension of officers of the Libertarian Party.[2]

Pursuant to the invitation of the Chair of the Judicial Committee, Mary Ruwart, I would like to submit this amicus brief to your committee. As a member of the national Libertarian Party, and member of the Libertarian Party of Tennessee, where I serve as Director of Communications and as a member of the state Judicial Committee, I hold candid appreciation for those on this body, and hope the same members will earnestly consider the points contained within it.

While possessing my own opinions on many aspects of this subject, I believe two angles of the matter have gone largely overlooked, and those areas serve as the focus of this document. No aspect of this brief reflects the position of the Libertarian Party of Tennessee, or the LPTN Judicial Committee, as it is instead the product of my personal sentiments only.

II. Judicial Committee Precedent and its Paramount Importance

Though the Judicial Committee's upcoming decision binds both parties – the LNC and the appellant – it also weighs heavily on the future of the party in numerous ways, and has far-reaching implications beyond those that are immediately obvious. If Libertarian Party history is any indicator, one of the most momentous is that the actions of this body will stand as a precedent to be referenced and invoked by future LNC committee members, officer candidates, party members, caucuses, and factions to achieve specific intra-party goals.[3]

If the Judicial Committee upholds the LNC's position on this matter, and denies a reversal to the appellant, precedents in the following realms will be etched into the stone of Libertarian Party jurisprudence, such that it exists.

a. The Nonaggression Principle (NAP)

The nonaggression principle, which stands as the most overarching, widely-cited and held axiom of the Libertarian Party, asserts that the initiation of force against an individual – to project harm against them or take their property – is always immoral. Put in another way, all individual behavior is permitted to the extent that it does not violate the rights of another. This principle is recognized both in the national pledge, which serves as a precondition for membership, as well as the pledge for many state affiliates where it serves a similar function. Even in areas it doesn't, members of the party are generally expected to adhere to it as a general rule that guides their behavior both inside and outside of party-related activities.

If the appellant's claim is not reversed, the party will be forced to adopt a precedent whereby the nonaggression principle is expanded to include:

- Criticism toward peers on the LNC that is demonstrably true, and not a matter of opinion
- Criticism toward peers on the LNC that is untrue, but is held as an opinion made on the basis of good faith

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By the most basic precepts of libertarianism, though, none of these scenarios qualify as violations of the same nonaggression principle that serves as the primary bedrock of this party.

According to seminal libertarian theorist and former Libertarian Party member Murray Rothbard, each individual has "a property right to the ideas or opinions in his own head" and "a property right to print anything he wants and disseminate it," even if "he knows it to be false." Rather than a natural extension of their self-ownership, one's reputation is instead the combination of attitudes toward a specific individual that are held by one or multiple other individuals. As one's reputation "is neither a physical entity nor is it something contained within or on his own person," Rothbard professes that no individual holds claim to "the beliefs and minds of other people," and thus, defemination is not a violation of the nonaggression principle. It is also worth noting that Rothbard was the chief architect and popularizer of the nonaggression principle, as it is known today, so his opinion on this carries disproportionate weight relative to those that argue against his understanding.[4] In support of Rothbard's position is Walter Block, who also explored the issue in depth and reached the same conclusions.[5]

Siding with the LNC case, which relies heavily on the allegation that the appellant has violated the nonaggression principle, would contravene the widely-held definition of the term to include activities that had never been conceived to have done so before. On the contrary, it would by precedent morph into a term that would include behaviors not merely unexplored, but patently rejected as violations of the nonaggression principle by even those that played the greatest roles in their inception and propagation.

By extension, siding with the LNC's case, as it is written, would transform our prime directive into that which is tantamount to putty in the hands of those that seek to pervert it for their own purposes, which would include weaponizing it against their intra-party rivals. This propensity, while serving an immediate purpose to those that use it in such a way, would debase the principle to such an extent that it would no longer remain the chief cornerstone upon which our exceptional worldview rests. Upholding the removal of the appellant, then, even if it served a short-term goal, would have egregious long-term repercussions for the party as a whole.

Moreover, even if the term "for cause" within Article 6, Section 7 of the national bylaws is interpreted broadly to mean any behavior, the case used to justify the removal of the appellant, contained within the bill of particulars, does not meet its own standards defined in the same document. This is because the activities cited in the appellee's document do not violate the nonaggression principle, even if they are found to be record the factual actions of the appellant. If such a parallel scenario were presented before Libertarian jurors in a criminal court, the appellee's case would be hastily invalidated by nullification on the same basis.

While good faith arguments can sometimes be made to suspend a national party officer even if doing so would lead to negative precedents, the appellee has built their case around transient offenses that could apply in the same manner to other members of the same body. In this case, the campaign for removal seems highly selective in such a way, even if warranted. Beyond the dominion of libertarian philosophy, if the items cited in the appellee's bill of particulars amount to "fraud" or "abuse" that warranted removal, no organizational body – the LNC or otherwise – could ever sustain itself.[6] In such a case, no Congress could convene, no city council could operate, and no company board could subsist without suppressing all internal dissent.

b. Document Availability and Discovery

During the Judicial Committee appeal hearing on October 17, 2021, it became clear that the appellant was not provided a copy of the LNC amicus brief, drafted by Special Counsel Oliver Hall, that articulated the body's interpretation of "for cause" in Article 6, Section 7 of the national party bylaws. The failure to provide this resource barred the appellant from planning, organizing, and executing a full defense in preparation for the hearing.

On the other hand, after the appellant submitted her case and documents to the Judicial Committee, the same artifacts were distributed to the LNC in due time to use in that party's preparation for the same hearing. The dissemination of these materials aided the appellee in preparing their sentiments for the same hearing, equipping it with all documented particulars of the appellant's case.

Ultimately, equal access to the same documents aided the appellee at the expense of the appellant. This oversight violates the most basic tenets of discovery, a widely acknowledged legal maxim that long predates the birth of our own country. Furthermore, our commitment to due process as libertarians wisely extends beyond the political realm – it is consistent with our duty to abide by the nonaggression principle and treat others in ways wish to be treated ourselves. In sum, it is a hallmark of our philosophy.

If the miscarriage to deny equal discovery rights stands through a decision to uphold the removal, the Judicial Committee would violate the appellant's rights in our own "courts" while the party dares to denounce the state's propensity to do the same in the public arena. Besides appearing as hypocrites to the general public and prospective future members of our party, upholding the removal would thereby create a precedent threatening the discovery rights of all future appellants to the body. If brought to fruition, this injustice would hinder the defenses of future officers removed by the LNC, the latter of which would likely cite this decision as precedent to justify denying the same right to others.

III. Conclusion

As the Judicial Committee is fully aware, copious time and resources have been poured into the cases of both the appellant and the appellee, and party members have weighed in on all sides of the issue. Regardless of whatever merits exist in regard to the behavior the appellant engaged in so as to justify her removal, the body's decision to uphold or reverse the LNC's action is a pressing matter with broad implications for the future of the party as a whole.

If the body chooses to uphold the LNC's decision, it provides safe cover for a significant anti-libertarian malignment of the nonaggression principle, countering the time-honored specifics of our most foundational creed. Furthermore, a decision to affirm the LNC's deed violates the discovery rights of the appellant, in a party that seeks to preserve and even expand those same rights in the political sphere. It would favor the short-term expedience of the appellee over long-term party tranquility, and disregard the deliberate action of the duly-elected delegates that voted for the appellant as Secretary in 2020. Such a decision would do much, therefore, to make our party more like the entity we are all fighting to oppose – the state – in its tendency to undermine the rights of the individual.

If the gradual degradation of individual rights through judicial precedent in the history of constitutional law equips us with any knowledge, it is that we should not emulate the same pattern in our own pro-individual party that challenges the cult of the omnipotent state.[7] Whether or not one thinks the appellant culpable for the actions taken by the LNC, or whether the appellee met the requirements to remove her "for cause," a decision to uphold the removal of the appellant would have sweeping negative consequences for the party, and should be avoided at all costs.

[1] In particular, this was accomplished through the submissions of documents to the Judicial Committee, and within the hearing on October 17, 2021.
[2] This power is articulated in Article 8, Section 2, Clause B.
[3] For instance, the appellee cites a previous 2008 case of removal as justification that it acted in accordance with the bylaws on page 2 of its response to the appeal.
[4] See Murray Rothbard, *For A New Liberty: The Libertarian Manifesto* (New York: Collier Macmillan, 1973).
[5] Murray Rothbard, *The Ethics of Liberty* (New York: New York University Press, 1998), 126-128; Walter Block and Jacob Pillard, "Libel, Slander, and Reputation According to Rothbard's Theory of Libertarian Law," *Journal of Libertarian Studies* 24 (2020): 116-142.
[6] Speaking on behalf of the LNC in support of the removal at the appeal hearing on 10/17/2021, LNC representative John Phillips used both of these terms to describe the actions of the appellant, Caryn Ann Harlos.
[7] For instance, see *Schenck v. United States* 249 US 47 (1919), *Korematsu v. United States* 323 US 214 (1944), and *Terry v. Ohio* 392 US 1 (1968). For examples in England, see the abuses of the Star Chamber of the 15th-17th centuries, particularly the anti-appellant precedents of the 1630s during the Personal Rule of King Charles I. The term "cult of the omnipotent state" comes from the Libertarian Party Statement of Principles.