

October 22, 2021

Libertarian Party Judicial Committee  
Attention: Chairwoman Mary Ruwart  
[jc@lnc.org](mailto:jc@lnc.org)

Madam Chair and Members of the Judicial Committee:

I am a sustaining member of the LNC and a member of the executive committee of the Libertarian Party of Florida duly elected at our 2020 state convention. I submit this amicus to you for the consideration of the Judicial Committee (JC) in my personal capacity.

The purpose of this amicus is to draw attention to the possibility of finding the vote suspending the LNC Secretary Caryn Ann Harlos was made under violations of law, bylaws, rules and custom. As a result of an improper votes being counted toward the suspension, I ask the JC to find the vote itself null and void and immediately order the reinstatement of the LNC Secretary.

The following questions were asked in research conducted regarding the incident where Alternate David Sexton was allowed to vote instead of Region 2 Representative Steven Nekhaila which includes an informal legal opinion.

The following questions were proposed in the research:

*Was David Sexton properly authorized to participate (voice and vote) in the previous LNC meeting?*

-Under the LNC bylaws and policy manual?

-Under RONR, which also requires meetings to follow laws governing non-profit corporations (applied either through DC or Virginia)?

-Under custom, which expects region representatives to make arrangements with alternates to replace them in meetings and they are required to communicate. Was this custom followed?

*In answering the above question, how are the terms alternate, substitute and proxy defined with respect to another in the bylaws and other governing documents?*

-This is important because the LNC bylaws do authorize proxy substitutions for their board members and those proxies are designated as the alternates but it seems only are alternates allowed to automatically without further proxy from the regional representative to vote in the event of a mail or email ballot. However, the LNC policy manual uses the term "free substitution" with the footnote that states, "Normally, alternates may only fill vacancies, not absences."

In conclusion, we determined that without a written authorization from the Regional Representative, alternates are not allowed to be recognized let alone vote at “in person” meetings such the one that considered the motion to suspend the LNC Secretary. Mr. Sexton had no authorization from Mr. Nekhaila and the LNC Chair had no authority to grant such to a non-LNC member.

References:

LNC bylaws Article 7.1 authorizes proxies

LNC bylaws Article 13 deals with alternates voting on mail ballots (or in the electronic form, email ballot

LNC policy manual section 1.01(1) discusses the participation by LNC alternates at meetings with  
Footnote

(Other references provided in the attached PDF report)

Links:

<https://www.lp.org/bylaws-and-convention-rules/>

<https://www.lp.org/wp-content/uploads/2021/08/LNC-Policy-Manual-Adopted-thru-2021-06-06.pdf>

Attached are an unsigned legal opinion and a copy of the report on the issues concerning the vote to suspend the LNC Secretary.

Thank you for your time. Should you have a question about this brief, please contact me at the email and phone number below.

Sincerely,

Hector Roos

Contact: 786-284-5387

Email: [HectorRoos@gmail.com](mailto:HectorRoos@gmail.com)

## LNC Proxy Vote Statement

Based on "Whereas" clauses 7-9, this motion should carry because David Sexton impermissibly voted for Steven Nehkaila without prior authorization and in violation of RONR guidelines and Virginia law. This opinion is based on the RONR recommendations for non-stock corporations regarding proxy voting in conjunction with the controlling jurisdiction's laws on the matter.

Per the RONR (12th ed.) §§ 45:3 and 45:70-71, defining the "Right of Abstention" and "Proxy Voting," the following language, taken from the rules, is controlling in this matter:

Although it is the duty of every member who has an opinion on a question to express it by his vote, *he can abstain, since he cannot be compelled to vote.*" (emphasis added). See § 45:3.

A proxy is a power of attorney *given* by one person to another to vote in his stead; the term also designates the person who holds the power of attorney. Proxy voting is *not permitted* in ordinary deliberative assemblies *unless the laws of the state in which the society is incorporated require it*, or the charter or bylaws of the organization provide for it. Ordinarily it should neither be allowed nor required, because proxy voting is incompatible with the essential characteristics of a deliberative assembly in which membership is individual, personal, and nontransferable. . . But *in a nonstock corporation*, where membership is usually on the same basis as in an unincorporated, voluntary association, *voting by proxy should not be permitted unless the state's corporation law—as applying to nonstock corporations—absolutely requires it.* (emphasis added). § 45:70.

The foregoing clearly indicates that Mr. Nekhaila was permitted to abstain from voting, which he did by removing himself from the assembly without explicitly and formally designating a proxy to vote in his stead. It also clearly indicates that RONR guidelines have a presumption against proxy voting in the types of non-stock corporations that the LNC is, unless Virginia law specifically requires proxy voting, which as discussed below, Virginia law does not.

Per the Virginia Nonstock Corporation Act, Section 13.1-847 governing "Proxies" it is *permissible but not required* that a member entitled to vote appoint a proxy to vote in his/her stead. Section 13.1-847(A) provides as follows:

A member entitled to vote *may* vote in person or, unless the articles of incorporation or bylaws otherwise provide, by proxy. (emphasis added).

Section 13.1-847 then goes on to describe the specific process by which a valid proxy appointment is to be conducted. See §13.1-847(B) and (C). As this procedure was not followed,

nor did Mr. Nekhaila make any other binding appointment of Mr. Sexton to vote in his stead, counting Mr. Sexton's vote as that of Mr. Nekhaila's was improper.

In conclusion, because RONR guidelines governing proxy voting have a presumption against proxy voting in the types of corporations that define the LNC, and because Virginia law governing same does not require proxy voting, without specific proxy appointment by Mr. Nekhaila, Mr. Sexton's vote was void *ab initio*. Accordingly, failing to carry the votes required to remove Caryn Ann Harlos from her position as LNC Secretary, she should be immediately reinstated.

# Steven Nekhaila LNC Vote Controversy in CAH Removal

## Overview

At their September 4, 2021 meeting, the Libertarian National Committee Executive Committee (LNC) voted to suspend their secretary who was duly elected at convention Caryn Ann Harlos (CAH). The vote was close and the deciding vote was Region 2 Representative Steven Nekhaila's vote in support. Upon review of it was determined that the Region 2 Representative Alternate David Sexton has showed up at the meeting being held in-person in Louisville, KY while Nekhaila had left earlier to catch his flight home on Sunday afternoon. This report will provided analysis on the conduct of Mr. Nekhaila, Mr. Sexton and LNC Chair Whitney Bilyeu in how Nekhaila's vote was counted and the concerns affecting applicable state law and parliamentary rules. A number of recommendations are made at the conclusion.

## Summary of Events

*Providing for a vote total for removal to pass:* The LNC [agenda](#) for their meeting on September 4, 2021 contained a "Motion to suspend the LNC Secretary." The removal justification was based on the [LNC Bylaws, Article 6, Section 7](#) which reads in the relevant text: "The National Committee many, 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." (Emphasis mine).

17 members of the LNC national committee (4\* officers, 5 at-large, 8 regional reps). A 2/3 vote would be 11 votes. \*Since the LNC member to be considered for removal is not allowed to vote, under RONR they do not count toward the 2/3 supermajority goal to pass. See RONR(12th ed.) sec. 44:3 "Two-Thirds Vote." p. 295.

Ultimately, the vote was for 11-2-1. If Steven Nekhaila was allowed to abstain, the vote would have been 10-2-2 and the motion would have failed.

*Controversy rests with the chair:* The controversy is whether Nekhaila's position of abstaining could be construed as not present to allow for Sexton to vote in his place. The LNC Chair exercised their discretion to recognize Sexton and allow him to cast the deciding vote.

## RONR and Legal\* Analysis on Why Steven's Vote Should Not Count

*\* non-attorney opinion*

*Analysis Summary:* Without a written or otherwise expressed authorization from Nekhaila to Sexton, the LNC Chair abused their discretion to allow Sexton to cast the deciding vote to remove the LNC Secretary. This behavior establishes a dangerous precedent and under the circumstances should provide enough reason for the LNC Chair to call the vote out of order due to it being decided because of the possible illegal vote.

*Right to Abstain:* Nekhaila had the intention to abstain from voting on the motion to remove the LNC Secretary and left the room without providing any instructions to Sexton. Under RONR, abstaining is a form of voting. Regardless of the presence of David Sexton in the room,

the chair improperly recognized him while the actual regional representative was out of the room to vote on their behalf without authorization. This scenario is no different if Nekhaila went to the bathroom when the vote was called and Sexton's vote was counted for Nekhaila. As a result, this seems to be an egregious violation of RONR essentially compelling Nekhaila to vote. See RONR(12th ed.) sec. 45:3 "Right of Abstention." p. 298.

*Alternates are proxies by another name:* RONR uses the term proxy whereas the LNC Bylaws uses the term "alternate" where through the Bylaws this proxy is fixed to whomever was selected as alternate at convention. RONR requires a proper proxy assignment from Steven to Sexton, which without Sexton's vote can be challenged as invalid both to the chair and before the relevant court of law. Nekhaila is by parliamentary rule and by law the person in control of the seat who is entitled to voluntary transfer "voice and vote" by use of a proxy. See RONR(12th ed.) sec. 45:70-71 "Proxy Voting" p. 314.

*State law applies to proxies:* Since the LNC is incorporated under the laws of the District of Columbia and operates out of the state of Virginia. The LNC is not a voluntary association but an incorporated non-stock, non-profit corporation. Both jurisdictions provide for a high requirement that supersedes the LNC bylaws for ensuring proxies are assigned in a voluntary and written (can be electronic) form. Thus, these actions are on its face a violation of state law. See [Virginia Nonstock Corporation Act, Section 13.1-847](#) or [DC Non-profit Corporation law](#).

## **Recommendations**

Like the practice we have in Florida for assigning proxies or transferring duties between Regional Representatives and alternates to ensure that these transfers are unambiguously clear, the LNC should also consider setting several red line procedures in place, such as:

1. Require the submission of an email between the secretary, the regional representative and the respective alternate whereas the regional representative transfers "voice and vote" to the alternate and the alternate replies accepting.
2. If the regional representative needs to leave early, when they announce on the record their departure so the secretary can recalculate quorum, the regional representative should declare whether they have made arrangements for their alternate to be present. These actions would be recorded in the meeting minutes.
3. A chair cannot recognize an alternate without the secretary confirming the appropriate proxy authorization which could be addressed otherwise with a point of order raised. If a vote is determined by a possibly improper alternate or proxy, the vote should be set aside. Failure of a chair to address this matter when brought to their attention can be appealed under parliamentary law to the rule making committee which has this authority.

Furthermore, under RONR, there is no technical time limit to resolve violations of rules that constitute an ongoing controversy. See RONR(12th ed.) sec. 23:5-6 "Timeliness Requirement for a Point of Order." p. 202. And sec. 23:8 "Remedy for Inclusion of Improper Votes." p. 203. However, it is suggested that the practical time limit to appeal these results after

a meeting is concluded is before the next meeting where there the minutes of the recent meeting are approved.

## Cited references

[LNC Bylaws, Article 6, Section 7](#) p. 5

7. 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. 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. The Judicial Committee shall set a date for hearing the appeal between 20 and 40 days of receipt of the appeal and shall notify all interested persons, which persons shall have the right to appear and present evidence and argument. At the hearing the burden of persuasion shall rest upon the appellant. 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. Failure of the Judicial Committee to rule within 30 days shall constitute an affirmation of the National Committee's suspension of the officer. At such time as the suspension is final, the office in question shall be deemed vacant.

RONR(12th ed.) sec. 44:3 “Two-Thirds Vote.” p. 295

*44:3 A two-thirds vote*—when the term is unqualified—means at least two thirds of the votes cast by persons entitled to vote, excluding blanks or abstentions, at a regular or properly called meeting. For example (assuming that there are no fractions of votes):

- If 30 votes are cast, a two-thirds vote is 20.
- If 31 votes are cast, a two-thirds vote is 21.
- If 32 votes are cast, a two-thirds vote is 22.
- If 33 votes are cast, a two-thirds vote is 22.

RONR(12th ed.) sec. 45:3 “Right of Abstention.” p. 298.

**45:3 Right of Abstention.** Although it is the duty of every member who has an opinion on a question to express it by his vote, he can abstain, since he cannot be compelled to vote. By the same token, when an office or position is to be filled by a number of members, as in the case of a committee, or positions on a board, a member may partially abstain by voting for less than all of those for whom he is entitled to vote.

RONR(12th ed.) sec. 45:70-71 “Proxy Voting” p. 314.

**45:70 Proxy Voting.** A *proxy* is a power of attorney given by one person to another to vote in his stead; the term also designates the person who holds the power of attorney. Proxy voting is not permitted in ordinary deliberative assemblies unless the laws of the state in which the society is incorporated require it, or the charter or bylaws of the organization provide for it. Ordinarily it should neither be allowed nor required, because proxy voting is incompatible with the essential characteristics of a deliberative assembly in which membership is individual, personal, and nontransferable. In a stock corporation, on the other hand, where the ownership is transferable, the voice and vote of the member also is transferable, by use of a proxy. But in a nonstock corporation, where membership is usually on the same basis as in an unincorporated, voluntary association, voting by proxy should not be permitted unless the state's corporation law—as applying to nonstock corporations—absolutely requires it.

**45:71** If the law under which an organization is incorporated allows proxy voting to be prohibited by a provision of the bylaws, the adoption of this book as parliamentary authority by prescription in the bylaws should be treated as sufficient provision to accomplish that result (cf. [56:49n1](#)).

#### [Virginia Nonstock Corporation Act, Section 13.1-847](#)

##### **§ 13.1-847. Proxies.**

A. A member entitled to vote may vote in person or, unless the articles of incorporation or bylaws otherwise provide, by proxy.

B. A member or the member's agent or attorney-in-fact may appoint a proxy to vote or otherwise act for the member by signing an appointment form or by an electronic transmission. Any copy, facsimile telecommunications or other reliable reproduction of the writing or transmission created pursuant to this subsection may be substituted or used in lieu of the original writing or transmission for any and all purposes for which the original writing or transmission could be used, provided that such copy, facsimile telecommunication or other reproduction shall be a complete reproduction of the entire original writing or transmission.

C. An appointment of a proxy is effective when a signed appointment form or an electronic transmission of the appointment is received by the inspectors of election or the officer or agent of the corporation authorized to tabulate votes. An appointment is valid for 11 months unless a longer period is expressly provided in the appointment form.

D. An appointment of a proxy is revocable unless the appointment form or electronic transmission states that it is irrevocable and the appointment is coupled with an interest. Appointments coupled with an interest include the appointment of:

1. A creditor of the corporation who extended it credit under terms requiring the appointment;

2. An employee of the corporation whose employment contract requires the appointment;  
or

3. A party to a voting agreement created under § [13.1-852.2](#).

E. The death or incapacity of the member appointing a proxy does not affect the right of the corporation to accept the proxy's authority unless notice of the death or incapacity is received by the secretary or other officer or agent authorized to tabulate votes before the proxy exercises the proxy's authority under the appointment.

F. An appointment made irrevocable under subsection D is revoked when the interest with which it is coupled is extinguished.

G. Subject to § [13.1-848](#) and to any express limitation on the proxy's authority stated in the appointment form or electronic transmission, a corporation is entitled to accept the proxy's vote or other action as that of the member making the appointment.

H. Any fiduciary who is entitled to vote any membership interest may vote such membership interest by proxy.

RONR(12th ed.) sec. 23:5-6 “Timeliness Requirement for a Point of Order.” p. 202.

**23:5 Timeliness Requirement for a Point of Order.** The general rule is that if a question of order is to be raised, it must be raised promptly at the time the breach occurs. For example, if the chair is stating the question on a motion that has not been seconded, or on a motion that is not in order in the existing parliamentary situation, the time to raise these points of order is when the chair states the motion. After debate on such a motion has begun—no matter how clear it is that the chair should not have stated the question on the motion—a point of order is too late. If a member is unsure of his point or wishes to hear what the maker has to say on behalf of the motion before pressing a point of order, he may, with the chair’s sufferance, “reserve a point of order” against the motion; but after the maker has spoken, he must insist upon his point of order or withdraw it. Points of order regarding the conduct of a vote must be raised immediately following the announcement of the voting result (see [45:9](#)).

**23:6** The only exceptions to the requirement that a point of order must be made promptly at the time of the breach arise in connection with breaches that are of a continuing nature, whereby the action taken in violation of the rules is null and void. In such cases, a point of order can be made at any time during the continuance of the breach—that is, at any time that the action has continuing force and effect—regardless of how much time has elapsed. Instances of this kind occur when:

a) a main motion has been adopted that conflicts with the bylaws (or constitution) of the organization or assembly,<sup>2</sup>

- b) a main motion has been adopted that conflicts with a main motion previously adopted and still in force, unless the subsequently adopted motion was adopted by the vote required to rescind or amend the previously adopted motion,
- c) any action has been taken in violation of applicable procedural rules prescribed by federal, state, or local law,
- d) any action has been taken in violation of a fundamental principle of parliamentary law ([25:9](#)), or
- e) any action has been taken in violation of a rule protecting absentees, a rule in the bylaws protecting the secrecy of the members' votes (as on a ballot vote), or a rule protecting a basic right of an individual member ([25:7](#), [25:10–11](#)).

RONR(12th ed.) sec. 23:8 “Remedy for Inclusion of Improper Votes.” p. 203.

**23:8 Remedy for Inclusion of Improper Votes.** If the announced result of a vote included votes cast in violation of a fundamental principle of parliamentary law, such as votes cast by nonmembers or by absent members, or multiple votes improperly cast by a single member, a point of order can be raised so long as the decision arrived at as a result of the vote has continuing force and effect. If there is any possibility that the vote(s) would have affected the outcome, the results of the vote must be declared invalid if the point of order is sustained.

**Subject:** Re: LNC Regional Representative Treatment in Recent LNC Meeting

**From:** Steven Nekhaila <steven.nekhaila@gmail.com>

**Date:** 9/11/2021, 3:14 PM

**To:** HC Roos <region14@lpf.org>, Lynn House <vicechair@lpf.org>

Hello Hector,

I apologize for the late response, a lot going on at home with a new baby on the way and remodeling so things have been hectic and hopefully subside soon.

Now, let's get down to business:

*1) Did you declare your intention to abstain from remaining business on the agenda before you left the LNC meeting? If so, how did you do so?*

No, while an abstention is technically a No in the case of that particular vote (which required a majority of the board to vote Yes), my intention was never declared to the board.

*2) Did you formally declare that you were leaving the meeting where the secretary was obliged to recalculate quorum and/or log your absence?*

On the first day of business, Saturday, September 4th, Caryn Ann Harlos mentioned on the record that I would be leaving and that she intends to move a motion to allow remote participation for myself as well as Josh Smith, and Erik Raudsep, who could not attend. I did not announce my official departure until 9AM on the start of business Sunday, and removed myself from the meeting at 10AM with the understanding of the LNC.

*3) Is it the custom of the LNC regional representatives to make arrangements with their alternates to stand in their place at the LNC meeting and how they should participate in the LNC business?*

Absolutely, I was messaging with Sexton prior to the meeting letting him know I will be there, as he has another baby on the way and a new house to deal with. He mentioned that if I needed him, he would be several hours away if necessary. I said I would be making the meeting and not to worry about it. The problem with late Sunday motions is that no one knows what time the adjournment will be, and typically we leave the most important things for Saturday, Sunday is usually insubstantial. Which is why I had my tickets to leave arranged how I did, fyi it was before the removal motion was put on the books, the latest flight to Key West still would have been 2PM.

*4) Are you aware that under Robert's Rules, abstaining is a form of voting and similarly no one can compel your seat to vote or not vote? See RONR(12th ed.) sec. 45:3 "Right of Abstention." p. 298 (also in the attached).*

I was not previously aware, I will do a deep dive into your assessment momentarily.

*5) Did you at any time discuss with David Sexton about arranging for him to stand in your place in your absence at the LNC meeting? If not, why do you believe Sexton felt he was in his right to do so without your acknowledgement?*

I did not discuss with Sexton that I would be removing myself from the meeting on Sunday. He must have found out on Saturday when Caryn Ann Harlos notified the committee on her intentions to move the motion to allow remote participation. I had not notified him personally and did not discover his presence at the meeting until 45min after I had left the airport and was already seated at my terminal. Had I known, I would have stayed and made other arrangements to get back home. Sexton believed it was within his rights to vote, and since the seat was vacated, alternates have historically always had precedent just by showing up.

*6) Are you aware if David Sexton was in fact noted as present at any time by the secretary by the calling of a new attendance roll?*

I can only assume that upon him being seated at the table he Secretary indicated his presence. He was not present at the beginning of the meeting and only marked on roll call later. The official meeting minutes are still being worked on by CAH.

Sincerely,

Steven Nekhaila

On Fri, Sep 10, 2021 at 3:49 PM HC Roos <[region14@lpf.org](mailto:region14@lpf.org)> wrote:

Bravo on your recent statement about the new Biden Admin mandate.

Please do not forget to reply to my earlier email. Its the sort of task that is easy to forget, especially with many other issues.

I fully support your rights and those of future Regional Representatives to not be compelled to vote on matters they disagree with.

Kindly,

Hector Roos  
Regional Representative - Region 14  
Libertarian Party of Florida  
<http://www.LPF.org>

On 9/9/2021 12:02 PM, HC Roos wrote:

> Mr. Nekhaila,

>

> I am reaching out to you in your capacity as the LNC Regional

> Representative for Region 2 to inquire about what occurred in the

> recent LNC Meeting in what seems to be a breach in decorum and

> overreach in the authority of the chair to compel your seat to vote on  
> the remaining business. Vice Chair Hlavka is copied on this email  
> since he has expressed an active interest in this issue.  
>  
> Please answer the following questions as succinctly as possible  
> (rather than a long format narrative) so the LPF EC can understand  
> whether member rights were violated and as a result action from this  
> body should be taken to rectify the situation:  
>  
> 1) Did you declare your intention to abstain from remaining business  
> on the agenda before you left the LNC meeting? If so, how did you to  
> do so?  
>  
> 2) Did you formally declare that you were leaving the meeting where  
> the secretary was obliged to recalculate quorum and/or log your absence?  
>  
> 3) Is it the custom of the LNC regional representatives to make  
> arrangements with their alternates to stand in their place at the LNC  
> meeting and how they should participate in the LNC business?  
>  
> 4) Are you aware that under Robert's Rules, abstaining is a form of  
> voting and similarly no one can compel your seat to vote or not vote?  
> See RONR(12th ed.) sec. 45:3 "Right of Abstention." p. 298 (also in  
> the attached).  
>  
> 5) Did you at any time discuss with David Sexton about arranging for  
> him to stand in your place in your absence at the LNC meeting? If not,  
> why do you believe Sexton felt he was in his right to do so without  
> your acknowledgement?  
>  
> 6) Are you aware if David Sexton was in fact noted as present at any  
> time by the secretary by the calling of a new attendance roll?  
>  
> Attached is a further analysis that you are welcome to review and  
> comment on the essentials of what is believed to have occurred.  
>  
> Thank you for your time and congratulations on your recent engagement.  
>