

On the matter of the Suspension of the LNC Secretary

Filed by and on behalf of:

Dr. Chuck Moulton
Former Judicial Committee Member (2016-2022)

Judicial Committee,

Note that I represented Caryn Ann Harlos in the RONR trial with the LNC recently. I am writing you in a different capacity.

The following are some thoughts from someone who has been in your shoes before. I served on the LP Judicial Committee 2016-2022, and chaired the committee 2016-2020.¹ In 2021 when Caryn Ann Harlos was suspended by the LNC, I wrote the majority opinion of the judicial committee affirming that suspension.² For a multitude of reasons, I believe this situation is different and merits the opposite result.

In 2021 the LNC suspended Caryn Ann Harlos for the following reasons (summarized):

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

The JC began its analysis with the standard of review. We did not see ourselves as a super-LNC which could substitute its judgment for the LNC's; rather, we were an appellate body which granted some degree of deference. In factual matters, we used a clearly erroneous standard; whereas, we evaluated legal issues *de novo*. Our next task was to evaluate due process issues, such as whether a RONR trial was required. The JC determined LP bylaws superseded Robert's, which obviated the requirement for a RONR trial. On this point we were later overruled by the convention body, which stated the JC had erred in not requiring the extra due process afforded by RONR.³

The remaining bulk of our analysis centered on what "cause" was in the context of LP Bylaw 6.7, which stated in relevant 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." [emphasis added]. The bylaws did not define cause.

¹ LPedia biography of Dr. Chuck Moulton https://lpedia.org/wiki/Chuck_Moulton#Judicial_Committee

² Libertarian Party Judicial Committee ruling in the matter of: Appeal of Caryn Ann Harlos' Suspension from the Position of Secretary

https://lpedia.org/w/images/b/b9/JC_Opinion_in_the_Matter_of_the_JC_Appeal_of_Secretary_Harlos.pdf

³ "Ms. Harlos should have had full due process, including a trial, for her removal as Secretary. Ms. Harlos' removal from the position of Secretary is null and void for that reason." 2022 LP Convention minutes, p. 29.

https://www.lp.org/wp-content/uploads/2023/03/CONVENTION-MINUTES_2022-FINAL-V3.pdf

We were suggested many different definitions from respondent LNC, appellant Harlos, and interested amici. These different definitions were outcome determinative: the facts as presented would have led us to very different conclusions about her guilt depending whether “cause” was interpreted narrowly or broadly. Ultimately the JC settled on an implicit definition of cause in RONR, which was “conduct injurious to the organization or its purposes”.⁴ Through the lens of that definition, we evaluated each charge in turn: ultimately overturning the NAP and social media policy charges, but upholding the rest. Finally, we determined the charges were severable and were not pretexts for an impermissible reason for removal, so we upheld the suspension by a 4-2-1 vote. I would encourage the JC to read this opinion, which is linked in footnotes.

While the 2024 suspension may seem similar to the 2021 case, it departs in several material respects.

First, cause has been defined definitively in a different manner than 2021. Previously, “cause” was not defined explicitly in the LP Bylaws, in the LNC Policy Manual, or in RONR. RONR implicitly defined cause, and we adopted that definition. In July of 2022, the LNC amended its policy manual to add Policy Manual 1.01.4 Removal from Office, which states “No Party Officer or At-Large Member shall be subject to removal from office except for failure to perform the duties of office or gross malfeasance.”⁵ ⁶ There can be no doubt this is the current definition of “cause”. In the hierarchy of rules, the bylaws are supreme, then rules of order adopted by the society (such as convention rules and the policy manual), then Robert’s – which is made clear by LP Bylaw 16.⁷ Among the candidates for a “cause” definition examined by the 2021 JC, “failure to perform the duties of office or gross malfeasance” was among the narrowest. In my opinion as a member of the 2021 JC, none of the reasons given by the LNC (outlined above) would have met the threshold of cause, and her suspension would have been overturned if that definition has been in force at the time. Given our deliberations, I am confident most other members of the former JC would agree with that assessment.

Second, policies on harassment have been changed since 2021. At the same meeting the LNC defined “cause”, it also updated its harassment policy to only apply “while discharging official duties” and noted that “Mere criticism, even if harsh, of the policies, decisions, and business practices of the LNC by other members of the LNC shall not be considered harassment or

⁴ RONR 61:1.

⁵ July 30-31, 2022 LNC meeting minutes, pp. 23-24. https://www.lp.org/wp-content/uploads/2022/09/LNC-MINUTES_2022-07-30-31_FINAL.pdf

⁶ LNC Policy Manual 1.01.4, p. 6 (current version: last revised August 25, 2024). <https://www.lp.org/wp-content/uploads/2024/09/LNC-Policy-Manual-Adopted-thru-2024-08-25.pdf>

⁷ LP Bylaw 16. Parliamentary Authority: “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.”

grounds for removal from office for Officers and At-Large Members.”⁸ ⁹ Even under a very broad reading of cause, if these clear policies been in place in 2021, then I would have voted to overturn the charges related to harassment and the social media policy.

Third, the due process concerns are much more clearcut in 2024 than previously. In 2021 the JC grappled with whether a RONR trial was required. Our conclusion that a RONR trial was not required was a matter of interpreting the bylaws, and reasonable people could disagree. Later the convention body overruled us on that issue, finding that the LNC should have held a RONR trial. Here, in contrast, there are a multitude of due process violations. The starkest one in my opinion is the executive session for the trial. The bylaws are crystal clear on the allowable reasons for an executive session, and a trial is not one of them: “executive session may only be used for discussion of personnel matters, contractual negotiations, pending or potential litigation, or political strategy requiring confidentiality”.¹⁰ I was secretary of the bylaws committee that passed that change. We carefully considered what was included and what was not included. I explicitly asked whether a trial should be one of the exceptions.¹¹ Andy Craig, the author of that bylaw proposal, explicitly responded that it should not be included.¹² The bylaws committee voted with that understanding in mind. This was brought to the attention of the LNC at the beginning of the trial; however, they made the affirmative decision to throw the bylaws in the trash conducting the trial in secret. Note also that the argument that RONR procedures control is entirely without merit because LP Bylaw 16 makes clear Robert’s procedures only govern when “not inconsistent with these bylaws”.¹³ A secret trial is clearly inconsistent with LP Bylaw 7.15. It also violates the LP Policy Manual, which states “The motion to enter Executive Session must list all reasons for doing so from among the following: Personnel matters, Contractual negotiations, Pending or potential litigation, Political strategy requiring confidentiality”.¹⁴ None of those reasons were listed. The secret trial in clear violation of the

⁸ July 30-31, 2022 LNC meeting minutes, pp. 24-27. https://www.lp.org/wp-content/uploads/2022/09/LNC-MINUTES_2022-07-30-31_FINAL.pdf

⁹ LNC Policy Manual 1.07.6, p. 25 (current version: last revised August 25, 2024). <https://www.lp.org/wp-content/uploads/2024/09/LNC-Policy-Manual-Adopted-thru-2024-08-25.pdf>

¹⁰ LP Bylaw 7.15: “The National Committee and all of its committees shall conduct all votes and actions in open session; executive session may only be used for discussion of personnel matters, contractual negotiations, pending or potential litigation, or political strategy requiring confidentiality.”

¹¹ Email from Dr. Chuck Moulton to bylaws committee list on June 23, 2020: “Would disciplinary proceedings be appropriate for executive session as well? When allegations are being made, I would think an organization may want to guard against possible defamation litigation.”

¹² Email from Andy Craig (author of LP Bylaw 7.15) to bylaws committee list on June 24, 2020: “Disciplinary procedures for employees would be covered under personnel matters. Potential expulsion of an LNC member is something that’s always been discussed and acted upon in open session, so I don’t think that’s a problem. Indeed, I don’t think potential expulsion or other discipline of an elected board member should take place in executive session. That’s stuff the delegates have a right to know about.”

¹³ LP Bylaw 16. Parliamentary Authority: “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.”

¹⁴ LNC Policy Manual 1.02.5, p. 8 (current version: last revised August 25, 2024). <https://www.lp.org/wp-content/uploads/2024/09/LNC-Policy-Manual-Adopted-thru-2024-08-25.pdf>

bylaws frustrated appellant Harlos in her defense, including in this appeal. That alone is sufficient reason to overturn the suspension.

Current allegations (summary):

- Charge 1 - gross misconduct
 - Specification 1.1 - violated CO autonomy
 - Specification 1.2 - didn't obey chair
- Charge 2 - bad behavior
 - Specification 2.1 - litigation exposure
 - Specification 2.2 - maligned LNC members
 - a) misrepresentation
 - b) decorum
 - c) investigation interference
 - Specification 2.3 - obstruct investigation

Fifth, the charges currently before you are quite different from the charges in 2021. In my opinion many of the 2021 charges boiled down to the appellant being difficult to work with, though these charges were packaged in language which alleged violations of the policy manual and fiduciary duty. There were two fundamental questions: 1) can the LNC remove her (did it follow the bylaws and procedure), 2) should the LNC remove her (was that action positive or negative for the party). As a JC member, my hands were somewhat tied due to standards of review. I emphatically believed then as I do now that the LNC should not have removed the appellant. At the time I believed they could remove her under the bylaws with the charges and evidence they presented. Fast forward to today and I believe both questions get a resounding no: the LNC both cannot remove the appellant under these charges and should not remove her under these charges. Some of the charges before you now again boil down to the appellant being difficult to work with. However, other charges amount to her doing her job as secretary of a national party. Under the clear definition of "cause" adopted by the LNC and present in its policy manual right now, none of the charges or specifications rise to the level of "gross malfeasance". None of the charges allege anything resembling "failure to perform the duties of office". Gross malfeasance is a very high bar, requiring an extremely bad wrong; a flagrantly illegal act; or behavior flagrantly unauthorized under the bylaws – it is not the same as "misconduct", "misfeasance", or "nonfeasance"; and "gross malfeasance" cannot be interpreted the same as mere "malfeasance". Based on that definition alone, this judicial committee should immediately overturn the suspension – full stop.

Sixth, look at the specifics. Specification 2.2.b on decorum is voided by LNC Policy Manual 1.07.6, which exempts "mere criticism" and confines the policy to the exercise of official duties. Charge 1, specifications 1 and 2, and charge 2, specification 1, center on the appellant getting nominated presidential candidate Chase Oliver on the ballot in Colorado. In sending certificates of nomination to the secretary of state, the overwhelming evidence shows that 1) she was following the procedures employed by LNC secretaries for at least the last 20 years (and probably the entire history of the party), 2) it was part of her core duties as secretary under the LP bylaws and RONR, and 3) she followed Colorado state law. The notion that doing any of this

abridged affiliate autonomy (in contradiction to LP Bylaw 14.4 on supporting the presidential campaign, LP Bylaws 2.1 and 2.4 on the party's purposes, LP Bylaw 6.5 on her duty as secretary and therefore recording officer, RONR 47:33.7 and 47:33.9 on the duties of a recording officer, unambiguous language requiring support for the nominated presidential candidate in affiliate agreements signed by all 50 LP state affiliates, past custom of secretaries over the entire history of the LP, and LP Bylaw 5.5 stating affiliate autonomy can be abridged as provided in the bylaws) is not only wrong; it is ridiculous. The notion that doing this violated some mysterious duty to blindly obey the illegitimate instructions of the chair (in contradiction to LP Bylaw 6.5 stating core duties as recording officer and RONR 47:33.7 and 47:33.9 on the duties of a recording officer) is not only wrong; it is ridiculous. The notion that doing this opened the LP up to lawsuits (as if somehow the LP should ignore the party's purposes under LP Bylaw 2 or its obligations to the presidential ticket and the delegates who nominated them under Bylaw 14.4 to save itself from a frivolous lawsuit the LNC would easily win) is not only wrong; it is ridiculous. Using a clearly erroneous standard for weighing the evidence against the charges, all of the charges are completely without merit and they should all be overturned. No reasonable person could look at this evidence and come to the conclusion that helping to put the nominated Libertarian Party presidential candidate on the ballot in Colorado is a removable offense. I humbly submit to you that the current LNC is full of unreasonable people.

We find ourselves in a Kafkaesque situation where the sitting Libertarian National Committee has taken the position that the LNC secretary supporting Libertarian Party presidential candidate Chase Oliver by doing her job submitting certificates of nomination is somehow grounds for removal; while conversely, the LNC chair giving aid to his Republican opponent Donald Trump is somehow cause for celebration. I am dumbfounded! Let's be honest about the undertones of what is going on: A certain caucus has taken over the party, including the Libertarian National Committee – and perhaps even the Judicial Committee. Some of you are members of that caucus or fellow travelers with it. That caucus has lost its way, and the party has lost its way along with it. We have seen abhorrent homophobic statements about Chase Oliver from that caucus – despite the LP running openly gay John Hospers in 1972 (when it received an electoral vote) and having gay rights in its platform for over 50 years. We have seen systematic marginalizing of our presidential campaign from that caucus along with support for the campaign of Donald Trump, a candidate who ran in opposition to our nominated presidential candidate.¹⁵ This includes an outright endorsement of Donald Trump from Mises Caucus founder and LP staff member Michael Heise, which was re-tweeted and amplified by LNC chair Angela McArdle (re-tweet since deleted).¹⁶ Just this weekend, chair McArdle announced plans for a celebration of the inauguration of Donald Trump.¹⁷ Regardless of whether you supported the Mises Caucus in the past or not, I know that's not what any of you signed up for.¹⁸

¹⁵ <https://x.com/angela4LNCChair/status/1850973408693272661>

¹⁶ <https://x.com/DissidentMedia/status/1850674333431308697>

¹⁷ <https://x.com/angela4LNCChair/status/1857862028448379217>

¹⁸ <https://x.com/KenK4Pa/status/1850856740331384982>

I have been involved with the Libertarian Party for over 20 years now. I have several longtime friends on the JC who have been involved with the LP far longer than that. You were selected for the JC as party elders who care deeply for the future of the LP and faithfully adhering to its rules. I can tell you for a fact that I bleed yellow and appellant Caryn Ann Harlos bleeds yellow. A majority of the current LNC does not bleed yellow. A majority of the LNC seeks to sideline the Libertarian Party – why? as a vehicle to support Republican candidates. They see appellant Caryn Ann Harlos as someone who gets in the way of that goal. Credible rumors suggest after removing Caryn Ann, they will next remove treasurer Bill Redpath and then vice-chair Mark Rutherford. You may disagree with Bill and Mark on some matters, but no one can question they both bleed yellow too and they both have put an enormous amount of work into the party over a period of three decades. Overturning this suspension is not just required by the clear text of the LP Bylaws and LNC Policy Manual; it is also the right thing to do for the good of the party. I would urge every member of this JC to reflect on their long history with the party and whether they bleed yellow before choosing whether to follow the party rules or to instead blindly follow the marching orders of the Mises Caucus.

Please overturn the suspension of Caryn Ann Harlos and send a message to the LNC that our party bylaws are not dead letter.

Thank you for your consideration.

In liberty,
Dr. Chuck Moulton
Former Member, Judicial Committee (2016-2022)
Former Vice-Chair, Libertarian National Committee (2006-2008)
Former Chair, Libertarian Party of Pennsylvania (2006)
Former Chair, Libertarian Party of Virginia (2012-2014)
Life Member, Libertarian Party
Life Member, Libertarian Party of Pennsylvania
Life Member, Libertarian Party of Tennessee