

LIBERTARIAN NATIONAL COMMITTEE  
JUDICIAL COMMITTEE  
CAYN ANN HARLOS  
Duly Elected Secretary of the Libertarian National Committee

PETITIONER

v.

LIBERTARIAN NATIONAL COMMITTEE

RESPONDENT

BRIEF PRO SE AMICUS CURIAE IN SUPPORT OF THE PETITIONER

This statement contains an Amicus Curiae Brief submitted by Lifetime Member & 2024 DC convention delegate from Arizona, Nathan Gage Madden, in support of the argument of the PETITIONER.

I will lay out a bylaws-driven argument why the current motion to support a joint fundraising committee with Robert F. Kennedy Jr. (RFK Jr.) violates the bylaws.

I will also make an argument based on FEC law that allowing this motion to go into force puts the LNC at grave legal risk, and could subject officers and the JC to legal ramifications. Lastly, I will lay out an argument regarding fiduciary duty and how this motion clearly violates that standard.

AGREED UPON FACTS

The delegates at the 2024 convention chose Chase Oliver as our nominee after 7 rounds of voting. RFK Jr. tried, and failed, to win our nomination. In fact, he garnered less than 2% of the votes on his only ballot before he got eliminated. He also was loudly booed, by the delegates, during his speech at the convention and the well-meaning Libertarians who put his nomination forth were booed just as loudly during the nomination process. RFK Jr. made it clear that he wanted to use the Libertarian Party for their ballot access. Despite the obvious Party benefits of a potential RFK Jr. candidacy, which would have guaranteed future ballot access in many states, 98% of the delegates rejected his Presidential bid.

LNC ACTION

On July 8th, Angela McArdle (Chair AM) called for an Executive Committee meeting to discuss "Colorado Legal Issues". On July 10th, Chair AM notices a motion for the meeting that reads

“Motion to authorize joint fundraising effort with Robert F. Kennedy Jr.”. Chair AM also announced that she would be shortening public comment during this meeting. The same day, Caryn Ann Harlos (CAH) properly responds that the Executive Committee does not have the authority to take such an action because it is “not urgent or within their scope”.

#### POLICY MANUAL: THE EXECUTIVE COMMITTEE MOTION WAS NOT URGENT, BY DEFINITION

While the Executive Committee does retain all the powers of the LNC between meetings, it may only exercise those powers “when urgency demands a more immediate time frame than when the LNC can meet” (Policy Manual Section 1.01 #3). This was not the case in this instance. According to Policy Manual Section 1.02 #8, a full LNC meeting can be called by as few as two members in as little as five days. In short, Chair AM could have done this the right way, but she chose not to because she knew that she had the votes on the Executive Committee to ram through a quick motion with little/no public discussion and no time for the membership to react.

#### BYLAWS VIOLATION

In the LP Bylaws, Article 14 Section 4 states that “The National Committee shall respect the vote of the delegates at nominating conventions and provide full support for the Party’s nominee for President and nominee for Vice-President as long as their campaigns are conducted in accordance with the platform of the Party.” There is no argument that helping our nominated candidate’s opponent fundraise more effectively falls within the definition of providing “full support for the Party’s nominee for President”.

This is a clear Bylaws violation and should be enough, alone, to overturn this motion. This problem is exacerbated by the fact that this LNC has done the opposite of supporting our nominee in many other ways, such as giving cover for states who chose not to put Chase Oliver on the ballot, or even states like

Colorado who are trying to put RFK Jr. on the ballot. This is just the latest, and most egregious, violation of Article 14 section 4 of our Party’s Bylaws.

#### GENERAL FEC CONCERNS

##### FEC CONCERN #1: CONTRIBUTION LIMITS FOR PARTY COMMITTEES

In this section of the rules, the FEC makes it clear that you cannot skirt the rules by using Party Committee limits to get around the individual contribution limits for candidates:

“Candidate limit may apply A contribution received by a party committee may count against the contributor’s contribution

limit for a particular candidate if:

- The contributor knows that a substantial portion of his or her contribution will be given to or spent on behalf of a particular candidate; or
- The contributor retains control over the funds after making the contribution (for example, the contributor earmarks the contribution for a particular candidate).

## FEC CONCERN #2: APPLICATION OF CANDIDATE LIMITS TO CONTRIBUTIONS MADE TO UNAUTHORIZED COMMITTEE

Here is another section of the FEC Code that makes it clear that you cannot use absurd strategies to get around the candidate contribution limits: If an SSF makes a contribution to a committee not authorized by any candidate, and knows that a substantial portion of the contribution will be contributed to, or spent on behalf, of a particular candidate, the contribution counts against the SSF's per-election limit with respect to that candidate.

## FEC CONCERN #3: JOINT FUNDRAISING

Here is a section that pertains directly to joint fundraising committees that removes all doubt that this agreement would be illegal:

If, however, the allocation formula results in an excessive contribution to any of the participants, the excessive portion must be divided among the other participants. If the reallocation would exceed all of the remaining participants' limits, the excessive portion must be returned to the contributor.

## FIDUCIARY DUTY

While Fiduciary Duty is not found in the Bylaws, Policy Manual, or Robert's Rules of Order, it is a legal construct by which officers of a non-profit organization must act in accordance with the last. There are six distinct types of Fiduciary Duty:

1. Duty of Care
2. Duty of Loyalty
3. Duty of Obedience
4. Duty of Confidentiality
5. Duty of Prudence
6. Duty to Disclose

I will take you through the various portions of Fiduciary Duty that this motion violates.

## DUTY OF CARE

If this were a derivative suit, I may point out numerous violations of the Duty of Care pillar. But, this motion violates one main aspect of this: "Working to advance a nonprofit's mission and goals". The

LNC members have openly admitted that RFK Jr. is no Libertarian. Yet, we are going to utilize party resources to help him raise money to campaign against Chase Oliver, our Party's nominee for President. This is a clear violation of the Duty of Care.

## DUTY OF OBEDIENCE

Duty of Obedience means that board directors must make sure that the nonprofit is abiding by all applicable laws and regulations and doesn't engage in illegal or unauthorized activities. Once again, the potential FEC violations are a clear violation of the Fiduciary Duty pillar: Duty of Obedience.

## DUTY OF PRUDENCE

Duty of Prudence refers to being aware of risks and exercising caution in decision-making. The Executive Committee did zero FEC research when preparing this motion. Even if they found someone who would support the likelihood that this fundraising scheme would work, they have to know that the risk of a challenge being filed is extremely high (seeing as how we had a challenge filed last term when we did absolutely nothing wrong, and this action would actually have actual cause to file such a challenge. The Executive Committee clearly did not exercise their Duty of Prudence.

## CONCLUSION

I write to you as a currently elected local candidate, former statewide candidate, Arizona 2024 Delegate to DC, and lifetime member of the National Party. I write to you as a very concerned member of the Libertarian party. As someone who is intimately aware of how easy it is to file an FEC challenge, and how hard it is to fight one, this motion is extraordinarily reckless and unnecessary. Even if you set aside the obvious Bylaws, and Policy Manual violations – the risk associated with violating the FEC Rules, and the Non-Profit Fiduciary Responsibilities, make this a huge fine/penalty waiting to happen.

Uphold your duty and rule for the PETITIONER.

Pax Libertas,  
Nathan Gage Madden (Lifetime Member, AZ)

*Impotentis defendere libertatem non possunt*