

To: Members of the Libertarian Party Judicial Committee

From: Richard Brown, JD, RP, Registered Parliamentarian

Re: Appeal of Caryn Ann Harlos

Date: October 22, 2021

Dear Members of the Judicial Committee:

I am submitting this memorandum in support of the action of the Libertarian National Committee (LNC) in suspending Ms. Harlos and to supplement the brief submitted by the LNC and the oral arguments I made at the hearing on October 17.

I have served as the Parliamentarian for all of the LP national conventions since 2016, including both parts of the 2020 convention. I have also served as a consulting parliamentarian for the LNC and for LP chairs since 2016, including current Chair Whitney Bilyeu and Vice Chair Ken Moellman while he was serving as acting chair. The opinions which I am expressing in this opinion are those which I provided verbally to both Mr. Moellman and Ms. Bilyeu on several occasions since the first attempt to suspend Ms Harlos via an email motion was attempted several months ago while Mr. Moellman was acting Chair.

This memorandum will address two issues: First, whether an officer can be suspended via a regular motion pursuant to the LP bylaws or if a “trial” and all of the other steps as provided for in the disciplinary procedures of Chapter XX of RONR is required. Second, what constitutes “cause” for removal from office.

First Issue: Is a full-blown trial as contemplated by the disciplinary procedures of RONR required? No. The LP bylaws set out a customized procedure for removing an officer (and an at large member) from office which removes the process from the disciplinary process set out in Chapter XX of RONR.

RONR is clear that the disciplinary procedures contained therein, including the removal from office provisions, are default provisions which are effective only if an organization does not provide for its own method of imposing discipline or

removing an officer from office. That is made clear in several places in RONR, but primarily in section 56:57 regarding additional bylaw provisions which an organization might want wherein it says: *“In professional and some other societies there may be an article on disciplinary procedure; and such an article can be simple or very elaborate.”*

In the case of the LP, there is actually a very elaborate procedure which provides for a customized two step method of removing an officer from office which completely removes the process from the provisions of RONR. Article 6, Section 7 of the LP bylaws, first says that an officer can be SUSPENDED for cause by a vote of 2/3 of the entire LNC (excepting the officer that is the subject of the vote). There is no mention of a formal charge or trial. That indicates that the suspension would be via an ordinary motion. Further, that suspension does not actually remove the officer from office.

The remainder of that bylaw article sets out a rather elaborate method of the suspended officer being able to appeal the suspension to the LP Judicial Committee. An officer is not actually removed from office unless he or she either fails to appeal the suspension or if the suspension is upheld by the Judicial Committee. That process is COMPLETELY different from the default removal from office procedure set out in Chapter XX of RONR. Taken as a whole, the procedure for removal from office set out in the LP bylaws completely removes it from the complex provisions of RONR. In addition, the LP bylaws set out a completely different method of removing regional representatives on the LNC, further indicating an intent to provide for its own unique provisions for removal from office rather than defaulting to RONR.

This subject comes up from time to time on the RONR discussion board (forum) on the official RONR website. In that forum, experienced parliamentarians answer questions from the public regarding parliamentary procedure and RONR. A search of the forum found several threads (discussions) involving almost exactly this same question, i.e., what bylaw language does it take for a bylaw provision to supersede the default removal from office procedures in RONR? The almost unanimous answer by the most respected parliamentarians on the forum, including members of the RONR authorship team, is that ANY procedure in the bylaws for removal from office supersedes the default RONR provision and takes

it out from under the RONR disciplinary and removal from office provisions unless the provision provides for the RONR provisions to be followed.

The one thread most on point was a question posed by former LNC member Daniel Hayes in January, 2018 which involved this same bylaw provision for removal from office. Mr. Hayes wanted to know if the organization (he was referring to the LP and the LNC) must follow the disciplinary and removal from office procedures in RONR or if the LP bylaw provision for removal from office serves to remove it from the RONR provisions. The unanimous and unambiguous opinion of the parliamentarians who responded, including myself and former LNC member Joshua Katz, who is also a Registered Parliamentarian, was that the LP bylaw provision for removal from office provides a unique method for removal from office which renders the RONR provisions inapplicable. Josh Martin, who is probably the forum's most respected member besides the members of the RONR authorship team, weighed in with the same unequivocal answer. Here is a link to that discussion: <https://robertsrules.forumflash.com/topic/31364-should-ronr-be-consider-and-authority-in-matters-of-discipline-when-the-organization%E2%80%99s-bylaws-have-their-own-procedures/?tab=comments#comment-181841>

It should be pointed out that on the forum, if a question is correctly answered by one or two members, other members typically do not weigh in UNLESS THEY DISAGREE WITH THE ANSWER or want to add to it. If other forum members disagree with the answer, including members of the RONR authorship team, they do not hesitate to weigh in with a different opinion. There was no such differing opinion in that thread nor in any of the similar threads involving the same issue. In fact, in other similar threads, Dan Honemann, a respected member of the RONR authorship team, has expressed his agreement with the position that almost any reference to discipline or removal from office in an organization's bylaws removes it from the disciplinary provisions of RONR.

That is the clear and unambiguous position expressed in the parliamentary opinion to former LNC chair Bill Redpath in November of 2008 by Henry M. Robert III and Thomas J. (Burke) Balch of the RONR authorship team on this precise issue. A copy of that opinion was provided as an exhibit to the response by the LNC. I will note that I not only agree completely with that opinion, but that I expressed the same opinion verbally to acting Chair Ken Moellman prior to me knowing

about that opinion when he consulted with me when the first attempt to suspend Ms. Harlos was filed as a motion to be handled as an email ballot. My opinion was and still is that the disciplinary and removal from office procedures in RONR are not applicable to the suspension or removal of an officer of the LNC. I expressed the same opinion to Ms. Bilyeu when she consulted with me on the matter after she became Chair.

In conclusion, as to the matter of whether the disciplinary and removal from office provisions of RONR must be followed when suspending or removing an officer of the Libertarian Party, the overwhelmingly great weight of authority is clear: The LP, by virtue of its bylaw provisions on suspension and removal, has removed itself from those provisions of RONR.

Next, I will address briefly the subject of “cause” for removal from office.

The LP bylaws do not define “cause”, but state simply that officers (and at large members) may be suspended “for cause”, leaving it to the LNC to determine exactly what the “cause” is and whether it is sufficient. The appellant, Ms. Harlos, has argued that the definition used in the disciplinary provisions of RONR must be used. However, that will clearly not be applicable if the LP bylaws have opted out of the disciplinary and removal from office provisions of RONR. In addition, RONR provides in Section 61:1 that *“an organization or assembly has the ultimate right to make and enforce its own rules, and to require that its members refrain from conduct injurious to the organization or its purposes.”*

RONR also provides in Section 61:3 that *“If there is an article on discipline in the bylaws (56: 57), it may specify a number of offenses outside meetings for which these penalties can be imposed on a member of the organization. Frequently, such an article provides for their imposition on any member found guilty of conduct described, for example, as “tending to injure the good name of the organization, disturb its well-being, or hamper it in its work.” **In any society, behavior of this nature is a serious offense properly subject to disciplinary action, whether the bylaws make mention of it or not.**”* (Emphasis added).

The LNC has certainly claimed that the actions of Ms. Harlos have hampered it in its work, among other things. I submit that such conduct would certainly amount to cause for suspension or removal from office.

Again, a search of the RONR forum for definitions of removal “for cause” reveals that a determination of “cause”, absent a definition in the bylaws, is up to the assembly. RONR (12th ed.) Section 56:68 (1): “*Each society decides for itself the meaning of its bylaws*”. The LNC is the governing body of the party between conventions and must make that interpretation.

It is ultimately for the assembly (the LNC) to decide whether there was cause for suspension or removal. Since the bylaws do not define the exact nature of cause required for suspension and the burden of proof is on the appellant on an appeal to show that the LNC abused its authority, the finding of the LNC that there was cause for Ms. Harlos’ suspension should be upheld.

In conclusion, it seems clear that (1) a trial as contemplated by RONR is not required and (2) that the LNC itself has the authority to determine whether cause for removal existed. Therefore, the suspension of Ms. Harlos should be sustained.

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