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#### MEMORANDUM

TO: Caryn Ann Harlos

DATED: August 18, 2024

RE: **Parliamentary Opinion Regarding Ability of Libertarian Party of Colorado to Nominate Different Presidential and Vice-Presidential Candidates Than Those Nominated by the National Libertarian Party.**

QUESTION PRESENTED: You have requested my professional opinion as a parliamentarian<sup>1</sup> whether the Libertarian Party of Colorado, consistently with its bylaws and the bylaws of the national Libertarian Party of which it is an affiliate, may substitute other candidates for the offices of President and Vice-President of the United States than those nominated by the national convention of the Libertarian Party to appear on the Colorado ballot.

FACTS AND DOCUMENTS RELIED UPON: You have informed me that in May 2024 the national convention of the Libertarian Party nominated Chase Oliver for President and Michael ter Maat for Vice-President of the United States and that its National Committee has not subsequently taken any action to recognize or create vacancies in those nominations. You have further informed me that one of its state affiliates, the Libertarian Party of Colorado, has created a Vacancy Committee to nominate in their stead, as Libertarian Party candidates for the Colorado ballot, Robert F. Kennedy for President and Nicole Shanahan for Vice President, neither of whom are members of the Libertarian Party of Colorado. You have also provided me with copies of the bylaws for both the national Libertarian Party and the Libertarian Party of Colorado, as well as the Convention Standing Rules for the latter.

#### **I. COLORADO PARTY AS SUBORDINATE AFFILIATE OF NATIONAL PARTY**

ANALYSIS: The Libertarian Party of Colorado Bylaws state, “The Party shall be an affiliate of the national Libertarian Party which relationship can be severed by the Party only by a ¾ vote of

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<sup>1</sup> My qualifications for rendering a professional parliamentary opinion include that I am accredited as a Professional Registered Parliamentarian by the National Association of Parliamentarians, and that I am a member of the authorship team for *Robert's Rules of Order Newly Revised* and in that capacity have co-authored the 10<sup>th</sup>, 11<sup>th</sup> and current 12<sup>th</sup> editions of that book [hereafter cited as “RONR (12<sup>th</sup> ed.)”]. The website on the letterhead provides further background on my experience and qualifications.

all registered delegates at a regular state convention with the same threshold required for any additional affiliations.” Libertarian Party of Colorado Bylaws (hereafter cited as “Colorado Bylaws”) art. I(b).

Regarding its state affiliates, the Bylaws of the Libertarian Party provide, “The National Committee shall charter state-level affiliate parties . . . . No affiliate party shall take any action inconsistent with . . . these bylaws. . . . The autonomy of the affiliate . . . parties shall not be abridged by the National Committee or any other committee of the Party, except as provided by these bylaws.” Bylaws of the Libertarian Party (hereafter cited as “National Bylaws”) art. 5 (2,4,5).

The National Bylaws include Article 14 with the title, “Presidential and Vice-Presidential Campaigns.” Section 1 of that article states (emphasis added), “Nominations of candidates for President and Vice-President of the United States may be made **only** at the regular convention immediately preceding a Presidential election.”

However, subsequent sections of that article deal with certain contingencies regarding those so nominated. Section 3 provides, “In the event of the death, resignation, disqualification, or suspension of the nomination of the Party’s nominee for President, the Vice-Presidential nominee shall become the Presidential nominee. Two-thirds of the entire membership of the National Committee may, at a meeting, fill a Vice-Presidential vacancy, and, if necessary, a simultaneous Presidential vacancy.” Under Section 5, “A candidate’s nomination may be suspended by a 3/4 vote of the entire membership of the National Committee at a meeting. That candidate’s nomination shall then be declared null and void unless the suspended candidate appeals the suspension to the Judicial Committee... [details of procedure for appeal omitted].”

Article XIV of the Colorado Bylaws and Article 16 of the National Bylaws both make the current edition of *Robert’s Rules of Order, Newly Revised* (herein cited as “RONR (12<sup>th</sup> ed.)”) their parliamentary authority, each stating that the rules contained in it “shall govern the Party in all cases to which they are applicable and in which they are not inconsistent” with the relevant party’s bylaws or rules.

That parliamentary authority contains a number of “Principles of Interpretation” for the preparation and interpretation of bylaws. Among them is the canon: “If the bylaws authorize certain things specifically, other things of the same class are thereby prohibited.” RONR (12<sup>th</sup> ed.) 56:68(4). The National Bylaws, by authorizing a specific procedure for nominating Presidential and Vice-Presidential candidates (the national convention), a specific procedure for filling vacancies among those candidates (a vote of the National Committee), and a specific procedure for creating one type of such a vacancy through “suspension” of a nomination (a different vote of the National Committee), “thereby prohibit” the use of different procedures for nominating those candidates, and for creating and filling vacancies among those so nominated.

As cited above, National Bylaws art. 5(4) prohibits state affiliates from taking action inconsistent with those bylaws. RONR (12<sup>th</sup> ed.) 2:2 notes that while in general “an assembly or society is free to adopt any rules it may wish,” limitations on those rules “might arise from the rules of a parent body (as those of a national society restricting its state or local branches . . . .”

**CONCLUSION:** In my professional opinion as a parliamentarian, since the national Libertarian Party Bylaws both 1) mandate specific procedures regarding Presidential and Vice-Presidential candidacies that are inconsistent with state affiliates employing conflicting procedures and 2) prohibit affiliate parties from taking actions inconsistent with the National Bylaws, the Libertarian Party of Colorado, as such an affiliate, may not validly implement different

procedures to nominate candidates for President and Vice-President, including procedures to replace the candidates nominated by the national convention by purporting to declare and fill vacancies in those candidacies.

## **II. LIMITATIONS IMPOSED BY COLORADO PARTY BYLAWS APART FROM ITS STATUS AS A SUBORDINATE AFFILIATE OF THE NATIONAL PARTY**

ANALYSIS:

### **A. Could the Colorado Party Convention Directly Nominate Candidates for President and Vice-President?**

Colorado Party Bylaws art. XI, Section 4 covers “Nomination of Candidates.” Subsection (b) of that section provides a process leading to nomination that begins with applications for “Sustaining Members who wish to be a candidate for partisan office in Colorado other than President or Vice President . . . .” Section 4(e)(1) goes on to provide that “For any partisan offices, Annual Convention Delegates shall vote by approval voting to nominate candidates for those offices.”

Colorado Convention Standing Rule 4(a) provides, in relevant part:

The Campaigns Director shall . . . announce a list of partisan public offices open for election in the following order. . . .

(1) Federal Offices:

(i) Presidential Electors

(ii) U.S. Senate

(iii) U.S. House of Representative, in order of district number [State and local office listings omitted]

Convention Standing Rule 4(c) states, “Nominations and/or declarations, nominating speeches, and elections shall take place in the order they appear in Rule 4(a).” As noted above, it is a Principle of Interpretation in the Colorado Party’s parliamentary authority that “If the bylaws authorize certain things specifically, other things of the same class are thereby prohibited.” RONR (12<sup>th</sup> ed.) 56:68(4).<sup>2</sup> It follows that election of nominees for the offices of “President” and “Vice-President,” which are “other things of the same class” as Federal Offices, are prohibited during the state convention.

Thus, it is plain from these provisions that while selection of “Presidential Electors” is contemplated to occur at the level of the State Party, voting directly for candidates for President and Vice President is not. In my experience serving conventions of different state political parties (see <https://parliamentarianthomasbalch.com/qualifications/>), it is common for state political party conventions to select the Presidential electors to serve on behalf of Presidential and Vice-Presidential nominees while also selecting delegates to the national party convention at

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<sup>2</sup> The paragraph in the parliamentary authority preceding the list of Principles of Interpretation notes that while those principles refer to bylaws, they “have equal application to other rules and documents adopted by an organization.” RONR (12<sup>th</sup> ed.) 56:68.

which the candidates for President and Vice President will be selected, to the extent the electors or national convention delegates have not been determined by voting in primaries. Indeed, Colorado Party Bylaws art. XI, section 5 sets the procedure for the state convention to elect delegates and alternates to the national convention.

Moreover, Colorado Party Bylaws art. IV(2)(d) states, “Only Sustaining Members are eligible to receive the Party nomination for partisan public office. . . .” To be a Sustaining Member, one must also be a “Party Member” (art. IV(2)(a)) and eligibility for “Party Membership . . . is exclusively limited to all Colorado registered and pre-registered electors whose party affiliation is Libertarian.” Id. art. IV(1)(a); see also art. XI(4)(d). While this is not a legal opinion, it is a matter of common knowledge that, under the U.S. Constitution, when electors formally vote for President and Vice-President at least one of the candidates for those offices cannot be an inhabitant of the electors’ state, so that invariably candidates for those offices nominated by a political party are inhabitants of different states. An interpretation of the bylaws under which the Colorado Party were deemed able to nominate candidates for President and Vice-President would mean that since both would be required to be registered as Colorado voters, the Colorado electoral votes could not be cast for both. It is a Principle of Interpretation in the Colorado Party’s parliamentary authority that “When a provision of the bylaws is susceptible to two meanings, one of which conflicts with or renders absurd another bylaw provision, and the other meaning does not, the latter must be taken as the true meaning.” RONR (12<sup>th</sup> ed.) 56:68(2). If the plain language of Colorado Party Bylaws art. XI, Section 4(b) and Convention Standing Rules 4(a) and (c) did not exclude the Colorado Party convention from directly nominating candidates for President and Vice-President, the absurd result that electoral votes could not be cast for both in Colorado if those governing documents were interpreted to do so should exclude that interpretation.

### **B. May the Colorado Vacancy Committee Nominate Candidates for a Federal Office for Which the State Convention Is Not Authorized to Nominate?**

Colorado Party Bylaws art. XI(4)(f) provides, “Candidates may be nominated by a Vacancy Committee designated by the Delegates.” It is a Principle of Interpretation in the Colorado Party’s parliamentary authority that “There is a presumption that nothing has been placed in the bylaws without some reason for it.” RONR (12<sup>th</sup> ed.) 56:68(4). While the bylaws do not explicitly say, “Candidates may be nominated by a Vacancy Committee *to fill vacancies*,” neither do they read, “Candidates may be nominated by a committee designated by the Delegates.” It must be presumed that there is a reason the bylaws designate the committee as the “Vacancy” Committee, and the natural conclusion is that it exists to fill vacancies, meaning that a vacancy or vacancies must exist or be created in order for the Vacancy Committee validly to nominate candidates, and then only candidates to fill the vacancies.

Although the term “vacancy” is not specifically defined in the Colorado Party Bylaws, it is also used in the bylaws with respect to the Board of Directors and the Judicial Committee. It is a Principle of Interpretation in the Colorado Party’s parliamentary authority that “If a bylaw is ambiguous, it must be interpreted, if possible, in harmony with the other bylaws.” RONR (12<sup>th</sup> ed.) 56:68(1).

Colorado Party Bylaws art. VII(1)(d-e) provides, “Any Director absent without prior notice from two (2) consecutive regular Board meetings shall be considered to have resigned from the position. . . . All Director deaths or resignations shall cause their position to be considered to be vacant.” Id. (f) provides a process by which a Director may be removed, in which case “the position shall be considered to be vacant.” Id. (g) states, “The Board, by a two-thirds (2/3) vote, may appoint Members to fill any Director vacancies. Those appointed Directors shall serve until the next Annual Convention, subject to the conditions of this Article.” Id. (f) clarifies that “Director positions under suspension are not considered to be vacant.” Directors are normally elected annually by the state convention for staggered two-year terms in accordance with Article VII, Section 2. “An appointed Director’s term ends at the adjournment *sine die* of the Business Session of the next Annual Convention . . . when an election shall fill either the remainder of the term or the next full term . . .” Id. (c).

Article IX(1)(a) provides, “The Judicial Committee shall consist of five (5) Party members elected by the Delegates in attendance at every odd-year Annual Convention. In the case of vacancy, the existing members of the Judicial Committee may vote to fill the vacancy from qualified Party Members until the next election.” Id. (c) states, “If there are no existing members of the Judicial Committee to fill a vacancy, an intervening regular Convention may fill the vacancies or if it will be more than six (6) months until the next regular Convention, the Board shall call a Special Convention to fill the vacancies.”

In both of these contexts, a vacancy plainly refers to a position for which there is authority for someone to be elected but in which the person elected is no longer serving.

Under the Colorado Party Bylaws there is a provision by which a Director may be removed from the Board to create a vacancy (art. VII(1)(f)), and under National Party Bylaws art. 15(5) there is a procedure by which the national convention’s nomination of a Presidential or Vice-Presidential candidate may be nullified, thereby creating a vacancy in the nomination, but there is no provision in the Colorado Party Bylaws for a procedure to *create* a vacancy in the nomination of a candidate (as opposed to filling a vacancy caused, presumably, by such events as death or withdrawal).

CONCLUSION: In my professional opinion as a parliamentarian, even viewing the Colorado Party Bylaws apart from the state party’s position as a subordinate affiliate of the national party, those bylaws do not authorize the state convention directly to nominate candidates for President or Vice-President of the United States, nor do they authorize the state party Vacancy Committee either to nominate candidates for any office for which there is no vacancy or to create and then fill a vacancy in nominations for an office; in particular, they do not authorize such action with respect to nominations for President and Vice-President of the United States.

### **III. INELIGIBILITY OF ROBERT F. KENNEDY, JR. AND NICOLE SHANAHAN TO BE NOMINATED BY THE COLORADO PARTY TO ANY OFFICE**

In my professional opinion as a parliamentarian, if it is factually accurate that neither Robert F. Kennedy, Jr. nor Nicole Shanahan are Colorado registered voters who are sustaining members of the Libertarian Party of Colorado, then under Colorado Party Bylaws art. IV(2)(d) and art.

XI(4)(d) they are ineligible for nomination by the state party for any partisan office, including those of President and Vice-President of the United States.