Libertarian National Judicial Committee

Petitioner: Caryn Ann Harlos

vs

Respondent: Libertarian National Committee

Re: Suspension of the LNC Secretary Caryn Ann Harlos

Amicus Curiae Brief in opposition of Petitioner

by
Jonathan M. Jacobs,
Sustaining Member
November 21, 2024

Caryn Ann Harlos has made numerous claims of impropriety in her conviction and suspension from the office of Secretary of the Libertarian National Committee (LNC) as part of her appeal. This brief addresses some, but not all, of these. It will fall into two broad categories:

1. The propriety of Charge 2, which is, "Conduct That Disturbs the Well-Being of the Libertarian Party, Hampers it in its work, and That Renders Ms. Caryn Ann Harlos Unfit for the Office of Secretary."

2. The alleged issues of due process which are Points a through k (with i being repeated).

Part One, the Propriety of Charge 2.

In her filing, Ms. Harlos has claimed:

> "In fact, Charge Two is completely disallowed under the Policy Manual (it is a RONR charge word-for-word and the Policy Manual overrides RONR) and further Charge One only alleged gross misconduct which is NOT the same as gross malfeasance (Harlos[1], p. 32)."

She further stated:

> "Though I will respond to the below Specifications in the interest of thoroughness, I note that this Charge is completely out of order as the Policy Manual lists only two causes for removal: failure to perform the duties of office and gross malfeasance. This charge alleges neither and while it might be the basis for a censure (and a potential future member appeal rather than an automatic appeal), it is not cause for removal by our very own Rules, and if the JC has not already voided the removal due to the flagrant due process violations, this should be thrown out immediately as not included in the only two allowable causes. (Harlos, p. 50)."

Harlos is **wrong**, as this charge may be properly adopted under the LNC Bylaws.

Bylaws Article 6.7 states that "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 [Emphasis added] This requirement for "cause" cannot be superseded by a lesser rule, i.e. a clause in the Policy Manual. RONR establishes a bylaw is the highest internal rule within the organization and no lesser rule, i.e. one

in the Policy Manual, can be in conflict with it (RONR, 2:12). While it could be possible for such a rule to be incorporated in the Bylaws, a rule in a lower level document would conflict with Article 6.7.

The LNC Bylaws, Article 16, provide that, "the current edition of Robert's Rules of Order Newly Revised" as the parliamentary authority of the LNC; the current edition is the 12th edition[2], published in 2020, and is abbreviated as RONR. RONR (63:24) provides that:

> If the bylaws of the society provide for the imposition of penalties for offenses defined in the bylaws or an adopted code of conduct or similar set of rules, a charge may consist of such a defined offense. **If such particular offenses are not defined or are not applicable**, a member may be charged with "conduct tending to injure the good name of the organization, disturb its well-being, or hamper it in its work," or the like, and **an officer may be charged with misconduct of the type just mentioned or with "misconduct in office," "neglect of duty in office," or "conduct that renders him [or "her"] unfit for office.**" [Emphasis added]

In short, by adopting RONR, the LNC may charge with an offense that is not defined either in the Bylaws or in a "similar set of rules" such as the Policy Manual[3]. As noted, Charge 2 is "a[n] RONR charge word-for-word," but one that is completely permitted. Even if there were a list of offenses in the Bylaws that did not include the conduct described in Charge 2, it would still be in order for the LNC to charge, convict, and punish a member on those grounds. Charge 2 is fully within the existing rules, was in order at the time considered, and is a legitimate reason for removing Ms. Harlos.

Ms. Harlos, as noted in a brief by Dr. Chuck Moulton, has faced removal before, and appealed that removal to the Judicial Committee of the day. In that case, the amicus, in *opposition* to removal, wrote this:

> "Mr. [Dr. Chuck] Moulton asked for a definition of "cause" in removal. In writing this, I will try to delineate what constitutes "cause" from various issues.
>
> "In his presentation, Mr. [Richard] Brown spoke to this [the LNC parliamentarian testifying in support of LNC action], citing RONR 61:3 which noted that, even if not included in the bylaws, a member may be "found guilty of conduct described, for example, 'tending to injure the good

name of the organization, disturb its well-being, or hamper it in its works." Actions that fall under these broad categories would be considered "cause" under RONR. I agree with him on these points."[4]

Note that this was part of Harlos' case-in-chief in 2021, not an amicus brief. It was incorporated as part of her argument for overturning the removal. Both sides, in that case, agreed that RONR 61:3 was applicable. That said, in part:

"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."

Ms. Harlos also claimed in the current case:

"It is also noted, that the LNC could have chosen, knowing there would be an Appeal, to vote on a penalty for each Charge separately but did not, thus if one Charge is voided, the entire final vote should be vacated as it is unknown if someone would have moved to amend to censure or not voted to suspend on just one Charge (Harlos, p. 33)."

This is incorrect. The accused must be found guilty of, at least, ***a*** singular charge (63:24) with at least one underlying specification (63:33 e), to be punished. So long as that condition remained, so does the punishment.

In conclusion, Charge 2 may be legitimately adopted as a charge under the rules and Ms. Harlos may be convicted on that charge under the rules.

Part Two, Alleged Due Process Issues.

The second part is to address the claims that due process was not followed. There are at least 12 subpoints covering about 25 pages of text. There will be a great deal of paraphrasing, obviously.

a). The Investigatory Committee (IC) composition. Harlos objected to the composition of the committee. She had a vote on whom to select and she lost (Harlos, p. 7). The decision was not hers; it is left to the discretion of LNC as a whole. Her complaints are as silly as a bank robbery

suspect complaining that the police officer investigating the crime is not the one she wanted. That the LNC chose to appoint this IC and then chose to adopt its recommendations is more than sufficient to demonstrate the propriety of the committee. It is their call, made by majority vote, not hers.

Harlos also mischaracterized the role of the IC as it is defined in RONR (Harlos, p. 6). She cited a footnote (63:13 fn. 8) claiming that an IC is required. The report of such a committee is not binding, as that footnote states, in its first sentence, "If the investigating committee submits a report that does not recommend preferral of charges, it is within the power of the assembly nevertheless to adopt a resolution that does prefer charges." As can be seen from this quote, an IC is not determinant of if charges could be pursued.

The IC may recommend charges, and the LNC decline to pursue them, in whole or in part; the LNC did choose *not* pursue one specification in this case. The IC may recommend no charges, and the LNC may still charge. What happens regarding the IC recommendation is not determining factor upon if disciplinary action is pursued, much less of if the target is found guilty and punished.

While not truly relevant to the validity of the IC, the argument Ms. Harlos regarding the composition of the IC (Harlos, p. 7) can be addressed. There were five people on the IC; two of them, Mr. Nanna and Mr. Nekhaila, were people that she requested be on the Committee[5]. A third, Mr. McGee (Harlos, p. 11), contributed $1000 to Harlos's 2024 reelection campaign as secretary[6]. Then there is the case of Mr. Ford, whom Harlos indicated a six year friendship and who stopped communications (Harlos, pp. 10-11). Ford's reason is because Harlos is currently in litigation against the LNC, he does feel comfortable speaking to her ex parte[6]. The idea of a bias against Harlos is irrelevant, but if it were relevant, it would be ridiculous.

b) The October 6 adoption of the charges and IC report. This meeting referred the report and charges to a committee which did not include Ms. Harlos and met in executive session. It was not a trial committee, no one was tasked with prosecuting, there was no attempt to determine guilt. The committee reported back and the assembly, where Harlos had full rights to participate (had she attended) adopted most, but not all, of the charges and specifications, the "ancillary motions" and the text of the report. This is the establishment of a forum to determine guilt or innocence; it is not the place to offer a defense or to pursue a finding of guilty.

Harlos has also raised the issue of executive session. First, it should be noted that while RONR requires disciplinary action to be in executive session, it is not to protect the rights of the accused. It is to protect the society from libel (63:3). Second, the Bylaws, Article 7.15, prohibit action in executive session, but permit discussion of certain topics in executive session.

One topic is "personnel matters" and, by some definitions, an officer or director is a personnel matter. The second is one is broader and will apply in all executive sessions in this case, "potential litigation." Because of their nature, disciplinary actions are inherently prone to litigation. In writing about this subject a decade ago, the amicus wrote, "Second, it does illustrate a statement the author makes to any of his clients entering into disciplinary action, 'Even if you do everything right, you still have about a fifty percent chance of being sued.'"[7] He pointed out that this was even the case when the argument might cause a parliamentarian to "shake his head, or even suppress a chortle," there is still a good chance of litigation. Because of this, executive session is appropriate and well within the bylaws.

It should also be noted that no action was taken in this executive session. It reported back and one specification was withdrawn by unanimous consent at the open LNC session.

c) Inadequate time and lack of access to materials to begin to, and continue to, prepare defense.

Ms. Harlos was charged on 10/6 with a trial to be held on 11/9. She had 33 days' notice from the date that the notice was mailed (10/7).

Harlos claimed she had an illness that incapacitated her part of those 33 days, beginning about 10/5 and having an "inability to think clearly until around October 24, 2024." She made the analogy "think that normal people would agree that if there was an accused that was in a car crash and was then a coma for 20 days, but woke up 10 days before their trial, they were not really given thirty days (Harlos, p. 13)."

However, on 10/6, while supposedly having an "inability to think clearly," Harlos filed a long complaint against the amicus with his professional organization. She then filed a supplement on 10/7 (see appendix). There was no rush as the time frame for this complaint as it may be filed up to one year from the date of the alleged incident. Most normal people would agree that if an accused could file a complaint with a supplement, she could assist in her own defense.

d) November 9, 2024 trial held in Executive Session. As noted in b), executive session may be held for "potential litigation" and for personnel matters. In this case, there was *also* a contractor involved, Jonathan M. Jacobs, RP, CPP. The above mentioned complaint was the additional reason for the executive session.

Once again, executive session, which would be required under RONR, is not a due process right.

e) Claim of inadequate time to defend. RONR permits the setting of time limits any time prior to the start of the trial (63:32). They are normally done at the trial meeting. The fact that Ms. Harlos does not like it, is not sufficient to make it wrong.

f) No recording for appellate review. There was a record made.

g) Improperly excluded from active participation. Ms. Harlos had counsel. Despite her uncited claims, she has no right to be co-counsel. This actually dates back several hundred years to *Jefferson's Manual*[8] which notes that "On a misdemeanor, his appearance may be in person, or he may answer in writing, or by attorney (p. 138)." Note the conjunction "or." The ability to require only one person speak for the accused is part of the rule making ability described in RONR 63:32.

h) Not questioned about multiple items in IC report. Ms. Harlos was charged with two offenses, each with at least one specification. She was informed of these charges and specification. She does not have a right to be questioned on every point everyone else raised for which she is not being charged. It is irrelevant if there were things that she was not asked.

i) (1) Trial manager acted improperly as prosecutor. The determination of if a charge is legitimate is not left to the accused. The assembly determines if a charge is legitimate by adopting it and charging someone with it. Once that happens, the assembly moves forward.

i) (2) Advisory Parliamentarian for the Trial Manager was improperly permitted to enter into the proceedings as a factual witness. It is totally proper for a parliamentarian, who is a witness to some event, to testify about both what happened and the process. For example, Harlos indicated that the amicus opined that some proposed action of an affiliate would violate the national bylaws (Harlos, p. 27) and that he communicated that opinion to affiliate (p. 47). This encompasses two acts, his expert opinion on the validity of the act, and of what he told the affiliate; they cannot, meaningfully, be separated.

j) Irrelevant witnesses called and key witnesses ignored. Ms. Harlos is complaining about the witnesses interviewed by the IC. That is the IC judgement, not hers. If she felt that there were key witnesses ignored, she could have called them.

k) Public LNC Business List deleted during preparation of appeal. While the e-mail list went down, the e-mail that are relevant to this case are likely preserved. Ms. Harlos even included one in her filing (Harlos, p. 56).

Ms. Harlos' rights of due process were not violated by the LNC conduct of the trial. Further, the taking of testimony in executive session was consistent, in all cases, with the LNC Bylaw 7.15, as it involved "potential litigation." At the actual trial, it also involved "personnel matters" with a contractor and was also subject to executive session. It can also be argued that, under some definitions at least, an officer and/or a director is considered to be "personnel," making a trial a personnel matter on that ground as well.

End Notes

[1] Harlos, Caryn Ann, Appeal of the Suspension of the LNC Secretary [sic] Caryn Ann Harlos, 11/15/24 https://lpedia.org/w/images/f/fc/Harlos_Suspension_Appeal-LNC-v2.pdf

[2] Robert, Henry M., *Robert's Rules of Order Newly Revised* (12th Edition). Eds. Sarah Corbin Robert, Henry M. Robert, III, William J. Evans, Daniel H. Honemann, Thomas J. Balch, Daniel E. Seabold, and Shmuel Gerber, (New York: Public Affairs: 2020).

[3] This language was added in the 11th edition of RONR (2011).

[4] Jacobs, Jonathan M. Memorandum on Cause, 10/21/21 https://lpedia.org/w/images/e/ec/Memo_2_on_cause_by_JJ.pdf

[5] https://www.youtube.com/watch?v=3xIt6pN5E_A&t=14326s Timestamp: 3:23:10 ff.

[6] The amicus confirmed this information with McGee and Ford on 11/18/24 and received their permission to include it.

[7] Jacobs, Jonathan M., "Procedural Aspects of the Penn State Scandal," *Parliamentary Journal*, Vol. LV, No 4, 138 (October 2014) Digital text version: https://www.academia.edu/26614831/Procedural_Aspects_of_the_Penn_State_Scandal

[8] Jefferson, Thomas, *A Manual of Parliamentary Practice*, Washington, DC, 1801 (Applewood reprint). Note that, while greatly modified by adopted rules, this is still used as the manual for the US House.

Appendix

PROFESSIONAL RESPONSIBILITY COMPLAINT FORM

Adopted by the Professional Standards Committee September 22, 2020

Please provide your name and contact information:

Name of Complainant	CARYN ANN HARLOS
Address	[redacted]
City	CASTLE ROCK
State/Province/Country	COLORADO
Zip/Postal Code	80104
Phone	561.[redacted]
E-mail Address	CARYNANNHARLOS@GMAIL.COM
Date of Complaint	10/6/2024
Date(s) of Alleged Violation(s)*	ONGOING BUT BEGINNING AROUND MID AUGUST 2024
Signature of Complainant	[signature]

**Earliest alleged violation must have occurred no more than one year prior to filing of complaint.*

Please provide the name and contact information of NAP member against whom this complaint is being filed: *(Please provide all of the information you have.)*

Name of Respondent	JONATHAN M. JACOBS
Address	630 N 63RD STREET, APT 3FLR
City	PHILADELPHIA
State/Province/Country	PENNSYLVANIA
Zip/Postal Code	19151
Phone	215-229-1185
E-mail Address	JJPARLIA@YAHOO.COM

Supplement to Complaint mailed 10/7/24 regarding Jonathan M. Jacobs

Violation of 3.4

I could not add this before as it was paid of confidential report of the Investigation Committee regarding me and the Libertarian Party but through no fault of mine (but the Party) it was leaked. Mr. Jacobs is not only aiding in providing advice in the prosecution of me, he was a witness interviewed about his prior representation of me in which advice he gave me was used against me in a misleading manner. This is such an egregious breach of trust and client relationship. He cannot be both a witness for the prosecution and the parliamentarian for them. He never asked for or got my consent for any of our relationship to be disclosed. He was interviewed for over 1 hours and forty minutes.

Attached is original complaint form so that this can be attached.