Introduction

The Judicial Committee has asked for additional information about termination of a board member *for cause*. Additional research is available for perspectives on the matter. This document is an attempt to provide additional information for consideration by the Judicial Committee.

Common Sense

There is no reason to include the words "*for cause*" in the bylaws, unless the delegates wanted to prevent the LNC from acting without a good reason beyond "we want to".

The specific use of "*for cause*" in three specific scenarios - termination of an officer, an at-large board member, or an affiliate party - can only be reasonably interpreted to be deliberate, and reserved the use of that phrase for decisions with the most significant ramifications. Each scenario represents a major decision of the LNC, which is rarely if ever used. As described to me by one fellow LNC member, disaffiliation is an "atom bomb" approach to affiliate issues.

It is clear, by the wording of the bylaws, that there was delegate intent to make removal have a purpose other than "whatever the LNC wants".

Commonality and Context

The LP is not like any other organization. We're not a for-profit organization. We're incorporated as a non-profit, but do not function as a normal non-profit organization.

We operate as a political party, but not like the Old Parties. Note that the DNC, RNC, and Green Party Steering Committee elect their chairs and other officers, not the convention delegates.

The Democratic National Committee elects their board's chair, and can remove that chair, by majority vote[1]. Their rules do not require that the removal of the chair be "for cause". The DNC can also remove any other member of the DNC by a two-thirds vote for "good and sufficient cause" after a trial by the DNC[2].

[1] CHARTER OF THE DEMOCRATIC PARTY OF THE UNITED STATES, Article Five. https://democrats.org/wp-content/uploads/2018/10/DNC-Charter-Bylaws-8.25.18-with-Amendments.pdf
[2] BYLAWS (OF THE DEMOCRATIC PARTY OF THE UNITED STATES), Article Two, Section 5. https://democrats.org/wp-content/uploads/2018/10/DNC-Charter-Bylaws-8.25.18-with-Amendments.pdf

The Republican National Committee elects their board's chair and secretary, and can vote to remove a two-thirds vote of the Republican National Committee[3]. Their rules do not require that the removal be "for cause".

The Green Party also does not elect their main body in convention; instead, state parties elect 3 members (who can be recalled by those state parties) to form the National Committee, and the National Committee then elects their Steering Committee of seven co-chairs, a secretary, and a treasurer. A member of their Steering Committee can be recalled by a motion co-sponsored by 20% of their National Committee (31 members) which "must state the specific grievance(s) upon which the recall proposal is based" and "relate them to the relevant duties and responsibilities of the position", establishing cause[4]. There is then 3 weeks of debate and one week of voting; at least two-thirds of the state parties must vote, and at least two-thirds of those voting yes or no must vote yes to recall a member of the Steering Committee.

As can be seen, there are fundamental differences in the structure (in additional to the philosophical differences) between the LNC and the Democrats, Republicans, and Greens.

- The LNC is elected by convention delegates elected by state parties based on a series of mathematical formulas. None of the other national parties does this.
- Republicans and Greens explicitly require outlining cause; Democrats do not.
- Democrats and Greens explicitly require a trial or debate; Republicans do not.

Employees and Boards

There are two basic classifications: Employees and Board Members.

"Termination with cause" of an employee does not apply. The members of the LNC are not employees of the Party. LNC members are not compensated. In fact, LNC members donate large amounts of their personal funds to time, transportation, and various projects of the LNC.

In the case of the LNC, "for cause" applies to termination of a board member.

Board Member Termination

Google searches provide a number of various results for "for cause" termination of a "board member".

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[3] THE RULES OF THE REPUBLICAN PARTY, Rule No 5. https://prod-cdn-static.gop.com/docs/Rules_Of_The_Republican_Party.pdf?_ga=2.241510983.498806587.1635051837-355928436.1635051837

[4] Bylaws of the Green Party of the United States, Section 6-4. https://gpus.org/bylaws/

In searching for more definitions and examples, Law Insider[5] provided a number of examples and template definitions for removal clauses for termination from a board of directors (which is equivalent to the LNC):

> *"Removal for Cause means the removal of a Director by the Directors of the Invesco Funds or by shareholders due to such Director's willful misfeasance, bad faith, gross negligence or reckless disregard of the duties involved in the conduct of the office of Director."*
>
> *"Removal for Cause or "Removed for Cause" shall mean termination of the Director's service as a member of the Board of Directors of the Bank by reason of any of the following: (A) The willful, intentional and material breach or the habitual and continued neglect by the Director of his duties; (B) The Director's willful and intentional violation of (i) any State or Federal banking or securities laws, or of the Bylaws, rules, policies or resolutions of Bank, or the rules or regulations of the California Commissioner of Financial Institutions, Board of Governors or the Federal Reserve System, Federal Deposit Insurance Corporation, or other regulatory agency or governmental authority having jurisdiction over the Bank, which has a material adverse effect upon the Bank; (C) The Director's conviction of (i) any felony or (ii) a crime involving moral turpitude, or the Director's willful and intentional commission a fraudulent or dishonest act; or (D) The Director's willful and intentional disclosure, without authority, of any secret or confidential information concerning Bank or taking any action which the Bank's Board of Directors determines, in its sole discretion and subject to good faith, fair dealing and reasonableness, constitutes unfair competition with or induces any customer to breach any contract with the Bank."*
>
> *"Removal for Cause means the removal of a Director upon an intentional failure to perform stated duties, personal dishonesty which results in loss to the Company or one of its Affiliates or willful violation of any law, rules or regulation (other than traffic violations or similar offenses) or final cease-and-desist order which results in substantial loss to the Company or one of its Affiliates."*
>
> *"Removal for Cause means removal from the position of regular director of the Company grounded on violation of the law or the Company's bylaws or regulations."*
>
> *"Removal for Cause means the removal of the Outside Director by shareholder, regulatory or other appropriate action because of a material loss to the Holding Company or one of its affiliates caused by the Outside Director's personal dishonesty, willful misconduct, any breach of fiduciary duty involving personal profit, intentional failure to perform stated duties, or the willful violation of any law, rule or regulation (other than traffic violations or similar offenses) or final cease and desist order."*

[5] Law Insider, https://www.lawinsider.com/dictionary/removal-for-cause

"Removal for Cause means removal of a Director because of such Director's (a) willful and continued failure to substantially perform his or her duties as a Director, (b) willful conduct which is significantly injurious to the Company, monetarily or otherwise, (c) conviction for, or guilty plea to, a felony or a crime involving moral turpitude or (d) abuse of illegal drugs or other controlled substances or habitual intoxication."

"Removal for Cause means removal of a Non-Employee Director from office "for cause" within the meaning of Section 141(k) of the Delaware General Corporation Law or other applicable Delaware law."

Searching a bit more, Corporate Board Member[6] provides an example scenario with some key insights into how termination of a CEO for cause would effectively occur in a real-world scenario.

"You wake up and open the newspaper and find out that the president of your company has been arrested or committed a terrible act. What do you do?"

What happens when a closely-held corporation faces the need to terminate its president who is also a significant shareholder, because he or she acted improperly"

"The first question to ask is whether the president (or any other significant officer) is covered by an employment agreement."

"If the answer is yes, the next question is whether the employment agreement includes a provision defining what constitutes a termination for "cause." While almost every employment agreement has this type of clause, the actual definition of cause will vary from agreement to agreement."

"If, based on the particular facts involved, "cause" does exist, the board of directors could, and should, proceed with a vote to terminate. The procedure for calling a meeting depends on the company's specific by-laws."

"The board must carefully follow the bylaws regarding the notice of the meeting, including the time and location, as well as any required details of the agenda."

"If the president does not have an employment contract, there are several issues for the board of directors to resolve:"

"In states that do not allow "at-will" employment, the board must provide specific reasons for terminating the president that must withstand legal scrutiny if the president challenges the decision in court."

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[6] Corporate Board Member, "What To Do When The Board Needs To Terminate A Business Leader". https://boardmember.com/what-to-do-when-the-board-needs-to-terminate-a-business-leader/

“Finally, in every state, the board must be careful that its reasons for termination do not violate any local, state, or federal anti-discrimination laws.”

Code of Conduct and Contracts

The LNC bylaws do require signing the Pledge of Non-Aggression and upkeep of annual dues to remain a sustaining member, and being a sustaining member is a requirement to be a board member. The bylaws do not regulate individual behavior.

It could be argued that the bylaws are the contract between the elected officer and the party. Duties and expectations of the role are outlined, members seek election knowing those terms within the bylaws, and members elect (hire) them for a two-year term, expecting that person elected to execute those duties.

The Policy Manual exists as the self-regulation of LNC actions, and must live within the context of the bylaws. Does the Policy Manual have the authority to impose additional regulations upon board members?

Regional Representatives are governed by regional contracts. Member states decide how their regional representation will operate. California, for instance, elects their regional representative at their annual state convention. Some regions give their representative broad latitude. Others keep their representatives on a tight leash.

Our bylaws outline specific duties for officers, even providing for broad latitude for our chair in Article 6 Section 3, except those actions are specifically and explicitly “*subject to express National Committee policies and directives issued in the exercise of the National Committee's plenary control and management of Party affairs, properties and funds.*“ This is an example of where the bylaws specifically and explicitly limit the power of an officer and subject that power to the full LNC.

Nowhere in the bylaws is personal conduct covered. Private behavior outside of the boardroom is generally regulated in a Code of Conduct. The LNC currently does not have a codified Code of Conduct, and it could very well be argued that the LNC is not authorized to enforce a Code of Conduct on the board members. There is not a requirement to sign any contract to become a member of the LNC; board members of the LNC are elected by delegates in bi-annual convention.

Legal References

The LNC is incorporated in Washington DC and operating as a foreign corporation in Virginia. DC and Virginia law override our bylaws and RONR. Appendix A contains the language relevant to the removal of officers as governed by Washington DC. Appendix B contains the language relevant to the removal of officers as governed by the state of Virginia.

Summary

Prokauser[7], a legal firm specializing in employee benefits and executive compensation lawyers, notes:

> "*Terminating a CEO "for cause" requires that the board of directors ("Board") of the employer focus on two questions – What is the applicable standard for cause? Do the facts and circumstances satisfy this applicable standard?*"

What, exactly, is "*for cause*", both in the outside world and within our organization? Drawing from other organizations, and applying our philosophy and party rules, there are certain places where cause can clearly be established.

- Multiple instances of failure to perform bylaws-outlined duties, where the failure to perform those duties creates a harm to the organization.
- NAP violations and/or failure to upkeep annual dues.

When private behavior outside of the boardroom is regulated, it is usually outlined in a Code of Conduct, which the LNC does not have and may not have the authority to create or impose.

Closing

It is my hope that this information has provided the Judicial Committee with additional information to consider.

As a closing note, I will quote an article from BoardEffect[8] which outlines a process that would seem appropriate in this and future scenarios:

> *"One of the best and easiest ways to remove a director is to allow term limits to expire and not reappoint them. This is one of the reasons some boards limit the number of terms a person can serve. Term limits keep boards refreshed."*

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[7] Terminating a CEO with cause, Prokauser.
https://www.erisapracticecenter.com/2020/08/terminating-a-ceo-for-cause/
[8] How to Properly Remove a Nonprofit Board Member, BoardEffect.
https://www.boardeffect.com/blog/properly-remove-nonprofit-board-member/

“Direct interventions are another way to ask a board member to leave the board. Directly asking a board director to step down is often uncomfortable for everyone. ... This method of removal should involve the board chair, executive director and possibly an attorney. Once both parties agree, it’s best to put a clear time frame on when the director will resign or be relieved of their duties.”

“Finally, as a last resort, boards can impeach a board director, usually by a two-thirds vote. Nonprofit bylaws typically include language for impeaching a director for egregious acts such as conflicts of interest and not fulfilling board duties.”

“Removing a board director is almost always an unsettling event for boards. It’s a good idea to debrief the remaining board members in other positions about the situation during a board meeting after a director removal. Board directors should consider how to prevent such a situation from escalating in the future. Removing a board director may result in amendments to the bylaws or policies regarding the quality of orientation, board development training, the nomination process, and the practice of the board chair providing regular feedback to board directors.”

May we all come away from this situation wiser, learn to avoid escalation, learn to actively de-escalate, and make our organization stronger in the long-run for it.

APPENDIX A: WASHINGTON DC NON-PROFIT CORPORATE LAW

Subchapter VI. Directors, Officers, and Employees.

Part A. Board of Directors.
§ 29–406.08. Removal of directors by members or other persons.

(a) Removal of directors of a membership corporation shall be subject to the following provisions:

(1) The members may remove, with or without cause, one or more directors who have been elected by the members, unless the articles of incorporation or bylaws provide that directors may be removed only for cause. The articles or bylaws may specify what constitutes cause for removal.

(2) Except as otherwise provided in the articles of incorporation or bylaws, if a director is elected by a voting group of members, by a chapter or other organizational unit, or by a region or other geographic grouping, only the members of that voting group or chapter, unit, region, or grouping may participate in the vote to remove the director.

(3) The notice of a meeting of members at which removal of a director is to be considered shall state that the purpose, or one of the purposes, of the meeting is removal of the director.

(4) The board of directors of a membership corporation shall not remove a director except as otherwise provided in subsection (c) of this section or in the articles of incorporation or bylaws.

(b) The board of directors may remove a director of a nonmembership corporation:

(1) With or without cause, unless the articles of incorporation or bylaws provide that directors may be removed only for cause; provided, that articles or bylaws may specify what constitutes cause for removal; or

(2) As provided in subsection (c) of this section.

(c) The board of directors of a membership corporation or nonmembership corporation may remove a director who:

(1) Has been declared of unsound mind by a final order of court;

(2) Has been convicted of a felony:

(3) Has been found by a final order of court to have breached a duty as a director under part C of this subchapter;

(4) Has missed the number of board meetings specified in the articles of incorporation or bylaws, if the articles or bylaws at the beginning of the director's current term provided that a director may be removed for missing the specified number of board meetings; or

(5) Does not satisfy at the time any of the qualifications for directors set forth in the articles of incorporation or bylaws at the beginning of the director's current term, if the decision that the director fails to satisfy a qualification is made by the vote of a majority of the directors who meet all of the required qualifications.

(d) A director who is designated in the articles of incorporation or bylaws may be removed by an amendment to the articles or bylaws deleting or changing the designation.

(e) Except as otherwise provided in the articles of incorporation or bylaws, a director who is appointed by persons other than the members may be removed with or without cause by those persons.

Part C. Directors.
§ 29–406.30. Standards of conduct for directors.

(a) Each member of the board of directors, when discharging the duties of a director, shall act:

(1) In good faith; and

(2) In a manner the director reasonably believes to be in the best interests of the nonprofit corporation.

(b) The members of the board of directors or a committee of the board, when becoming informed in connection with their decision-making function or devoting attention to their oversight function, shall discharge their duties with the care that a person in a like position would reasonably believe appropriate under similar circumstances.

(c) In discharging board or committee duties a director shall disclose, or cause to be disclosed, to the other board or committee members information not already known by them but known by the director to be material to the discharge of their decision-making or oversight functions, except that disclosure is not required to the extent that the director reasonably believes that doing so would violate a duty imposed by law, a legally enforceable obligation of confidentiality, or a professional ethics rule.

(d) In discharging board or committee duties, a director who does not have knowledge that makes reliance unwarranted may rely on the performance by any of the persons specified in subsection (f)(1), (3), or (4) of this section to whom the board may have delegated, formally or informally by course of conduct, the authority or duty to perform one or more of the board's functions that are delegable under applicable law.

(e) In discharging board or committee duties a director who does not have knowledge that makes reliance unwarranted may rely on information, opinions, reports, or statements, including financial statements and other financial data, prepared or presented by any of the persons specified in subsection (f) of this section.

(f) A director may rely, in accordance with subsection (d) or (e) of this section, on:

(1) One or more officers, employees, or volunteers of the nonprofit corporation whom the director reasonably believes to be reliable and competent in the functions performed or the information, opinions, reports, or statements provided;

(2) Legal counsel, public accountants, or other persons retained by the corporation as to matters involving skills or expertise the director reasonably believes are matters:

(A) Within the particular person's professional or expert competence; or

(B) As to which the particular person merits confidence;

(3) A committee of the board of directors of which the director is not a member if the director reasonably believes the committee merits confidence; or

(4) In the case of a religious corporation, religious authorities and ministers, priests, rabbis, imams, or other persons whose positions or duties the director reasonably believes justify reliance and confidence and whom the director believes to be reliable and competent in the matters presented.

(g) A director shall not be a trustee with respect to the nonprofit corporation or with respect to any property held or administered by the corporation, including property that may be subject to restrictions imposed by the donor or transferor of the property.

APPENDIX B: VIRGINIA NON-PROFIT REGULATIONS ON REMOVING OFFICERS

§ 13.1-680. Removal of directors by shareholders.

A. The shareholders may remove one or more directors with or without cause, unless the articles of incorporation provide that directors may be removed only for cause.

B. If a director is elected by a voting group of shareholders, only the shareholders of that voting group may participate in the vote to remove the director.

C. If cumulative voting in the election of directors is authorized by the articles of incorporation, a director may not be removed if, in the case of a shareholders' meeting, the number of votes sufficient to elect him under cumulative voting is voted against his removal and, if action is taken by less than unanimous consent, voting shares entitled to the number of votes sufficient to elect the director under cumulative voting do not consent to the removal. If cumulative voting in the election of directors is not authorized by the articles of incorporation, unless the articles of incorporation or bylaws require a greater vote, a director may be removed if the number of votes cast to remove the director constitutes a majority of the votes entitled to be cast at an election of directors of the voting group or voting groups by which the director was elected.

D. A director may be removed by the shareholders at a shareholders' meeting if the meeting is called for the purpose of removing the director. The meeting notice shall state that the purpose, or one of the purposes of the meeting, is removal of the director.

E. Upon the removal of a director, the corporation may file an amended annual report with the Commission indicating the removal of the director and the successor in office, if any.

§ 13.1-860. Removal of directors

A. The members may remove one or more directors with or without cause, unless the articles of incorporation provide that directors may be removed only with cause.

B. If a director is elected by a voting group of members, only the members of that voting group may participate in the vote to remove him.

C. If cumulative voting is authorized, a director may not be removed if the number of votes sufficient to elect him under cumulative voting is voted against his removal. If cumulative voting is not authorized, unless the articles of incorporation require a greater vote, a director may be removed if the number of votes cast to remove him constitutes a majority of the votes entitled to

be cast at an election of directors of the voting group or voting groups by which the director was elected.

D. If a corporation has no members or no members with voting rights, a director may be removed pursuant to procedures set forth in the articles of incorporation or bylaws, and if none are provided, a director may be removed by such vote as would suffice for his election.

E. A director may be removed only at a meeting called for the purpose of removing him. The meeting notice shall state that the purpose or one of the purposes of the meeting is removal of the director.

F. Upon the removal of a director, the corporation may file an amended annual report with the Commission indicating the removal of the director and the successor in office, if any.

§ 13.1-870. General standards of conduct for directors

A. A director shall discharge his duties as a director, including his duties as a member of a committee, in accordance with his good faith business judgment of the best interests of the corporation.

B. Unless a director has knowledge or information concerning the matter in question that makes reliance unwarranted, a director is entitled to rely on information, opinions, reports or statements, including financial statements and other financial data, if prepared or presented by:

1. One or more officers or employees of the corporation whom the director believes, in good faith, to be reliable and competent in the matters presented;

2. Legal counsel, public accountants, or other persons as to matters the director believes, in good faith, are within the person's professional or expert competence; or

3. A committee of the board of directors of which the director is not a member if the director believes, in good faith, that the committee merits confidence.

C. A director is not liable for any action taken as a director, or any failure to take any action, if he performed the duties of his office in compliance with this section.

D. A person alleging a violation of this section has the burden of proving the violation.