

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 Response to

Richard Brown and to Jake Porter

by

Jonathan M. Jacobs,

Sustaining Member

December 12, 2024

Because this is more in the nature of testimony, this will be written in first person. It is a (brief) response to Richard Brown, JD, RP, and a longer one in response to Jake Porter. I had written an opinion for the Libertarian Party of Colorado specifically on the issue of the improperly selected electors in July of 2024, which Mr. Porter raises.

Response to Mr. Brown

First, Mr. Brown is misinformed. I did not draft or participate in drafting the language for Section 1.01 (4) of the Policy Manual, as it was initially drafted in 2022. I did recommend the broadening of counsel requirements in 2024. I have maintained that, absent a rule, a trial is required and no rule is necessary to require one; this has been my position since 2022 since a point of order at the Reno Convention, that a trial was required under the existing rules; that point of order had established a binding precedent under the rules as they existed. As a consequence, I have seen no need to draft a rule stating that a trial is necessary. A rule would only be necessary to modify the trial requirement.

Second, Mr. Brown's answer is a bit of red herring. I agree with him that, in most cases, a special rule can override a provision in the parliamentary authority (RONR, 2:16, see also n5). The issue, however, is if a special rule can modify language in the bylaws. The Bylaws (6.7) state, "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." Can a special rule, i.e. a policy manual rule, change the "for cause" clause in the bylaws, in the circumstances? Can a special rule bind not only the hands of the LNC, but also of the JC?

I am interested in hearing Mr. Brown's response to the questions in the second point.

Response to Mr. Porter

Mr. Porter made a claim, “Despite initially leading the LNC to believe otherwise, McArdle went so far as to try to remove Oliver from the Colorado ballot as can be found in public e-mails released from the Colorado Secretary of State.” That is a false statement based on the e-mail submitted. An email from the Libertarian Party Chair, Angela McArdle to the Colorado Secretary of State’s (SOS) office on July 17, 2024, is given as evidence. In this email she stated that, as Chair, she was “requesting that the false electors be withdrawn.” There were names of electors that were not properly chosen submitted on behalf of the Oliver campaign; that is not a request to withdraw the nomination paperwork. As I was asked to opine on this matter by the Chair of the Libertarian Party of Colorado (LPCO), Hannah Goodman, I can give you a summary. The opinion that she requested is attached below.

The LPCO selects presidential electors at its convention which happens prior to the national convention. Any elector that is seated by the state is required to vote for the candidate with the most votes; if the elector votes for someone else, his vote is voided and he is replaced.¹ At their convention in early in 2024, 10 electors were selected.

Caryn Ann Harlos filed nomination paperwork with the SOS on July 8, 2024 for Chase Oliver. On the next day (7/9), a list of Oliver electors was submitted to the SOS, though not by Ms. Harlos. Nine of the people on that list were not the electors chosen at the LPCO; they were not legitimately chosen as per the LPCO Bylaws.

Ms. McArdle’s email July 17, 2024 to the Colorado SOS deals with these individuals that were not properly chosen under the LPCO Bylaws. It was not “collusion” or an attempt to “try to remove Oliver from the Colorado ballot,” as Mr. Porter claims. Replacing the improperly selected electors would not have any bearing on if Oliver was on the ballot in Colorado. Further,

had Oliver won the state of Colorado, any elector would be legally compelled to vote for him, so it would make a huge difference, except possibly to the electors, and their supporters.

The claim that this is somehow “retaliate against Secretary[sic] Harlos,” is bizarre. One of the presidential electors that was properly chosen by the convention was nominated for the position by Ms. Harlos. That elector’s name is Wayne Harlos, the spouse of Caryn Ann Harlos. Had Ms. McArdle been successful in “requesting that the false electors be withdrawn,” Mr. Harlos would have been one of the legitimately selected presidential electors. Supporting Mr. Harlos’s legitimate claim to be a duly elected presidential elector could not possibly be retaliation against Ms. Harlos. If anything, it points against retaliation.

I will note that I was granted permission by Ms. Goodman to testify before the Investigatory Committee, at the trial, and to disclose this information in this format. Please note that the opinion was initially published on X with the redactions.

End Note

¹ The regulations relating to this appear here:
https://www.coloradosos.gov/pubs/rule_making/CurrentRules/8CCR1505-1/Rule24.pdf

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Facts Submitted by Client

After some initial contact, Hannah Goodman, the chair of the Libertarian Party of Colorado (LPCO) signed a letter of agreement with the parliamentarian on July 16, 2024, relating to the selection of presidential electors. Presidential electors are chosen within a state to elect the President and Vice President of the United States; one is granted for each member of Congress that the state has.

At the LPCO Convention on March 23, 2024, ten individuals were elected as electors. These were, Jacob Luria, Kyle Furey, Sean Vadney, James Wiley, Keith Laube, Eilseo Gonzolez, Marc Cavin, Wayne Harlos, Augustino Cantavero, and John Kittelson. At that point there was no nominee of the national Libertarian Party, as it would have its nominating convention in late May.

Chair Goodman indicated that the LPCO Convention had been properly called and had a quorum.

In May, the national Libertarian Party met in a convention and elected Chase Oliver as its presidential nominee and Mike ter Maat as its vice presidential nominee¹.

On July 9, 2024, a list of electors, purportedly from the Oliver campaign, was submitted to the Colorado Secretary of State's Office. This list included Sean Vadney, but his was the only name from the list of those elected at the convention. The others listed are [REDACTED]

Due to this discrepancy, Chair Goodman asked the following questions:

1. Does the LPCO select the presidential electors?
2. Does the national Libertarian Party or the candidate also get to select or remove presidential electors?
3. Can you recommend a remedy if this list is improper?

Works Cited

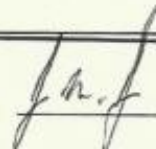
The current LPCO Bylaws, adopted in April 2023 shall be cited as Bylaws. Earlier versions, including what had been a separate constitution, shall be cited as "CO" with title and date.

The bylaws of the national Libertarian Party (LP), as adopted in May 2024², shall be cited as Bylaws. The platform of the national LP shall be cited as "Platform."

Both the national LP Bylaws (Article 16) and the LPCO Bylaws (Article XIV) provide that the current, 12th, edition of Robert's Rules of Order Newly Revised³ is the parliamentary authority of both groups. It will be cited as RONR.

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Other sources will be cited in end notes.

Commentary

The parliamentarian is well aware that there are controversies involving both the LPCO and the Oliver/ter Maat campaign, some of which have at least an element of parliamentary procedure. This opinion, however, is limited to the selection Libertarian presidential electors in Colorado.

The method for choosing electors is set by each state⁴ by a variety of methods; it is important for all involved individuals to remember that. Likewise, what the elector can do, how he can vote, varies from state to state. This has played a role in the history of the LP. In 1972, an elector from Virginia that was pledged to the Republican ticket cast his vote for LP nominees John Hospers and Toni Nathan, for President and Vice President, respectively. This "faithless elector," Roger L. MacBride, was the nominee for President of the Libertarian Party in 1976.⁵

While the votes of "faithless electors" may be cast in some states, it is effectively prohibited in others. Colorado "[p]rohibits faithless electors and explicitly cancels faithless votes."⁵ In other words, if the Libertarian nominee were to get the most votes, the elector may not exercise any judgement in voting for that candidate. Who the elector is, and what his political views on the nominee are, has no effect on the issue. The electors are selected in Colorado by a convention of the party, where delegates to the national convention are chosen.⁶

This process is not uniform in all states. In Pennsylvania, for example, the electors are selected by each nominee⁷ and the elector has full freedom in how to vote.⁸ Because there are multiple procedures for choosing electors in different states, there can be legitimate confusion.

Internally, the method the LPCO uses for choosing electors part of the method for choosing nominees for "partisan office" in Article XI, Section 4. e., of the Bylaws that is, they are chosen by the convention. This is also specified in the Convention Standing Rules of the LPCO, in Rule 4, a.1, i. Under RONR, this would mean by a majority vote and properly called convention (44:1). The meeting would also have to be quorate (3:3). In the case of a vacancy after such a convention a "vacancy committee" will fill the vacancy (Bylaws Article XI, Section 4. f.0).

Except for Mr. Vadney, the other nine were **not** selected electors according to the Bylaws. Further, since the electors were elected by the delegates, this effectively disenfranchises the state convention delegates.

The LP Bylaws do not so much as mention presidential electors or even hint that a nominee can appoint one as a matter of right. Their policy manual does not include the term. Only the LPCO may act to appoint electors.

There are several ways to fix the problem. First, the fact that the selection of the nine violates the bylaws can be communicated to the Oliver campaign. They may not be aware of the specific bylaw violation or that the electors cannot exercise any discretion, but must vote for the nominee with the most votes; this is quite possible due the variants in the process in different states. In other words, this may be an honest mistake on the part of the Oliver campaign. The campaign, moving with alacrity, may correct the filing with the Secretary of State's Office. This may involve having each of the nine withdraw his or her name or a more general statement.

Second, after being informed of the specific Bylaw violations, if the Oliver campaign declines to rectify the situation, the national LP Bylaws may be consulted. Article 14.4 provides that a nominee shall have "full support" only as long as the campaign is "conducted in accordance with the platform of the Party."

The Platform states, "Laws should be limited in their application to violations of the rights of others through force or fraud, or to deliberate actions that place others involuntarily at significant risk of

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harm (1.7).” Likewise the Statement of Principles, at least in referring to governmental action, notes that the LP shall, “support the prohibition of robbery, trespass, fraud, and misrepresentation.” The Preamble notes that, “that force and fraud must be banished from human relationships.” The filing of paperwork falsely designating electors may be considered fraud within the meaning of the Platform. If that determination is made by the Libertarian National Committee, the suspension clause of Article 14.5 may be triggered.

In addition, the nine people are members of the LPCO, and would be subject to disciplinary action under the general clauses of “tending to injure the good name of the organization, disturb its well-being, or hamper it in its work (RONR, 63:24).” This process is arduous, and contentious and would be done by the LPCO: See Chapter XX of RONR.

The parliamentarian would hope that all the parties would be able to resolve the matter using the first method. Certainly, the parties should at least be fully informed of the first option before the second one is taken.

Opinion

1. The LPCO selects presidential electors at its convention, or in the case of vacancies, by a vacancy committee.

_____ were not selected by either.

2. Neither the Libertarian National Committee nor the Oliver campaign may select electors in Colorado.

3. The options for remedy here may be:

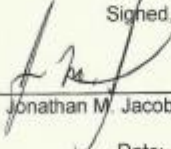
A. For the Oliver campaign to correct the filing listing only those people that were elected at the convention. Those were, Jacob Luria, Kyle Furey, Sean Vadney, James Wiley, Keith Laube, Eliseo Gonzolez, Marc Cavin, Wayne Hartos, Augustino Cantavero, and John Kittelson.

B. After informing the Oliver campaign, the Libertarian National Committee, and those members falsely claiming to be electors of the first option:

i. Invoke the suspension clause in the LP Bylaws, in regard to the Oliver campaign as a violation of the Platform.

ii. Initiate disciplinary action against the nine members claiming to be electors in violation of the LPCO Bylaws.

Signed,


Jonathan M. Jacobs, RP, CPP

Date:

7/26/24

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This is based on general principles of parliamentary procedure, the bylaws of this organization, and the cited parliamentary authorities; nothing in this opinion should be construed as an interpretation of statutory or case law.

End Notes

¹ There is currently a demand letter and threat of legal action claiming their nomination is effectively void. As of the date of the opinion, they are the Libertarian nominees.

² There has been a demand letter indicating that the singular amendment, regarding the seating of delegates, made to the bylaws is void. Nothing in this opinion refers to that amendment.

³ 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, Shmuel Gerber, New York: Public Affairs, 2020.

⁴ Inclusive of the District of Columbia.

⁵ Fair Vote, <https://fairvote.org/resources/presidential-elections/>, accessed 7/26/24 See also: https://www.coloradosos.gov/pubs/rule_making/CurrentRules/8CCR1505-1/Rule24.pdf

⁶ Colorado Secretary of State, <https://www.sos.state.co.us/pubs/elections/Candidates/FAQs/electoralCollege.html>, accessed 7/26/24

⁷ "Meet Pennsylvania's Electoral College voters: Everything they can — and can't — do," *Spotlight PA*, 11/13/2020, <https://www.spotlightpa.org/news/2020/11/pennsylvania-election-2020-electors-who-are-they-faithless-legislature/>, accessed 7/26/24 See also: <https://govt.westlaw.com/pac/Document/NE7FF6540343011DA8A989F4EECDB8638?transitionType=Default&contextData=%28sc.Default%29>

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