Libertarian National Judicial Committee

Petitioner: Caryn Ann Harlos

vs.

Respondent: Libertarian National Committee (LNC)

Re: Suspension of LNC Secretary Caryn Ann Harlos

Amicus Curiae Brief of Meredith Hays in Support of Respondent

To the Esteemed Members of the Judicial Committee:

Ms. Harlos made several statements of "fact" in her opening brief that call her credibility into question. Since Ms. Harlos put her credibility at issue, I believe I have no choice but to respond and point out her inaccuracies. This brief will also discuss various matters related to the issue currently before the Judicial Committee.

1. **Ms. Harlos Lied About Our July 12, 2024 Phone Call**

In her opening brief, Ms. Harlos stated the following:

> *In my first conversation with Ms. Hays which lasted for many hours as I considered it girl chat and not the set-up it turned out to be, comprised mostly personal conversation of grievances in her life and the recent 6th Circuit decision (it was not unusual for many LNC members to have long personal conversations), there was zero, none, zilch, offer of any kind of mediation.*

Ms. Harlos' recounting of this conversation is false. Whether she is intentionally lying or simply misremembering is not for me to determine, but I can unequivocally state that what she said is wrong. The entire premise upon which I initiated the call with her was to discuss the events surrounding the certificate of nomination that she submitted in Colorado, as I was not closely following and was confused about what happened. My text messages to Ms. Harlos immediately preceding the conversation are attached hereto as "EXHIBIT A."[1] During the call, I expressed to Ms. Harlos my stress and anxiety over seeing the discord between her and Chair McArdle. The first thing I asked Ms. Harlos during that conversation was what exactly happened and could I mediate the situation and nip it in the bud.

If the Judicial Committee is wondering how to determine whose recollection of events is more accurate, please note the following: The 6th Circuit decision, which Ms. Harlos *claims* we discussed at length during this call, was not issued until August 28, 2024. A copy is attached hereto as "EXHIBIT B." Our call took place on July 12, 2024. I do not have a crystal ball or powers of divination, and I am certain that she does not either. As such, we never discussed it during our July 12th phone call, nor did we discuss it in any future phone call. For the record, I did text Ms. Harlos after the 6th Circuit decision came out *in late August* to congratulate her for her hard work (and apparently, I was the only one to do so), but a text message is not a phone call.

Ms. Harlos claims that I discussed "grievances in [my] life" during our July 12th phone call, which is nothing but a naked and cynical attempt to make suggestions about my personal life (something which I never discussed with Ms. Harlos beyond surface-level

[1] Please note that portions of Exhibit A and Exhibit C have redaction marks on them. This is to respect the privacy of the individuals involved in the communications to the best of my ability while still maintaining the Exhibits' evidentiary effect.

commentary). I will discuss Ms. Harlos' motivations for making such insinuations and her propensity to lash out at any detractor further in Section (4) below.

The bottom line is that Ms. Harlos monopolized the entire 3 hour and 6 minute conversation, which I think anyone who is familiar with Ms. Harlos can attest to experiencing. She regaled me with her belief that LPCO and Ms. McArdle were in cahoots to further some alternate agenda, and I was basically falling asleep during the last hour of the call. This is not because it was boring – it is because it was past midnight on a Friday, and I work a full time job during the week.

Ms. Harlos also claimed that this call was a set up. That could not be further from the truth. As stated above, I was genuinely curious about what was going on, and wanted to help resolve matters if I could, as I have experience as a mediator. The fact that I was questioned about the conversation several months later by both the Investigatory Committee and the trial manager does not mean it was a set up. I told a member of the LNC that I was going to try to smooth things over with her before I called her - it was not a secret. I also have contemporaneous text messages that I sent to a member of the LNC during the conversation that support my characterization of the conversation, as several members of the LNC were at FreedomFest during this time and were curious as to whether I would be successful in turning the temperature down on the situation. I can provide those text messages to the Judicial Committee if necessary.

2. <u>I Made At Least 3 Attempts at Mediation with Ms. Harlos</u>

Ms. Harlos tries to muddy the waters and claims that I never made attempts at mediation. As I stated in Section (1) above, the entire purpose of my call to Ms. Harlos on July 12, 2024 was to see if I could mediate. Ms. Harlos does not consider this a "formal" attempt, but it certainly was on my end.

There is already recorded evidence of my second attempt at mediation during the LNC meeting on July 30, 2024. My third attempt occurred after the Investigatory Committee began its work. I was informed that Ms. Rebecca Whiting wanted to help Ms. Harlos mediate with Ms. McArdle, and so I reached out to Ms. Whiting in the hopes of facilitating such a meeting. In her brief, Ms. Harlos suggests that I should not have reached out to Ms. Whiting, as she is not a member of my region, but I am not sure why that is relevant. I learned that Ms. Whiting wanted to help Ms. Harlos mediate, and I wanted to help as well, so I offered my assistance. Attached hereto as "EXHIBIT C" is a message I sent to Ms. Whiting on September 15, 2024.

I also reached out to Hannah Goodman, Chair of LP Colorado, after the July 30th LNC meeting to see if she wanted to mediate with Ms. Harlos as part of the ongoing discord in Colorado. In her brief, Ms. Harlos suggests that this did not happen, as she never heard anything. Because of Ms. Harlos' endless Twitter attacks against Ms. Goodman, including false claims that Ms. Goodman was purposefully evading service of process, Ms. Goodman was not interested. I did not relay that to Ms. Harlos, because I did not want her to tweet that information to all of her 34,000+ followers and subject Ms.

Goodman to more of their ire. I can provide my messages with Ms. Goodman to the Judicial Committee if necessary.

I do not write this brief happily. I am heartbroken by the events that have taken place and by the loss of someone I considered a friend. To have her lie about me on a public platform is where I draw the line. It bears repeating that Ms. Harlos has placed her credibility squarely at issue – and I am here to show you that she is not as credible as she purports herself to be.

3. The Results of the Polygraph are Void of Evidentiary Value

I do not think I need to expound upon the science behind polygraph examinations, as there are three attorneys on the Judicial Committee who are likely to be familiar with that information. All that I will say is that Ms. Harlos wrote the questions for the polygrapher, and they are worded very carefully to avoid deception. Note the date of the rally in her written questions, and the date that the rally actually took place. That Ms. Harlos had complete control over this process (short of operating the machine herself) should render the results completely useless for gleaning anything other than the fact that she paid money for a polygraph examination, even though no one asked.

4. Ms. Harlos' Behavior and the Effect of Toxicity on the Board

I told Ms. Harlos early on that I wanted to stay out of this as much as possible. She brought me into it. Since Ms. Harlos' decision to go nuclear, I have been harassed by party members as a direct result of Ms. Harlos' goading. Ms. Harlos is mad at me because of my relationship with Mr. Malagon, who was the Chair of the Investigatory Committee. During our July 12th phone call, Ms. Harlos informed me that she considered Mr. Malagon to be one of her "best friends" along with Mr. Michael Seebeck. Only now that Mr. Malagon dared to disagree with Ms. Harlos does she consider him to be evil. This is why Ms. Harlos falsely claims that I discussed my private life with her during our July 12th phone call. She knows this insinuation is red meat to her sycophantic followers who despise Mr. Malagon. As demonstrated above, Ms. Harlos' retelling of events is not to be trusted.

This is why Ms. Harlos' current tactic is to shift focus onto other members of the board. It does not matter to her that no one else is the subject of these proceedings. If she is going down, everyone else must go down with her. As I have learned from past LNC members, this is par-for-the-course for Ms. Harlos. Around the time of her first removal, Ms. Harlos took it upon herself to publish YouTube videos disparaging other members of the board that she felt betrayed her. During one such video, Ms. Harlos went on a tirade against Ms. Erin Adams, whom she described as not being fit for leadership, and discussed sensitive medical information about one of Ms. Adams' children. Ms. Harlos also made false statements about that same child that were extremely derogatory. Shortly thereafter, Ms. Harlos turned around and spoke about how horrible it was that some members of the party were going after another LNC

member's children. This should not come as a surprise to anyone – the rules are there for all of us, not for her.

While I was not on the previous LNC that removed Ms. Harlos the first time, nor did I vote on the motion in Reno to void her removal, I sympathize with the members of that board. How can anyone be expected to work on a professional board with a person who thinks nothing of spreading lies about her fellow board members, and does not care about undermining the organization that she is supposed to serve if it furthers her own personal agenda? As a direct result of Ms. Harlos' behavior towards Ms. Adams, there were members of the LP Oklahoma who cancelled their memberships. I have considered resigning from the board solely because of her.

I will remind the Judicial Committee that Ms. Harlos, despite her protestations to the contrary, knows that what she did was wrong. The Judicial Committee might recall that *after* Ms. Harlos filed the nomination paperwork with the Colorado Secretary of State, she asked the LNC for co-sponsors on a motion to direct staff to do the same in a couple of other states. A copy of this email is attached hereto as "EXHIBIT D." Why did she not do the same for Colorado before she acted? Everyone knows by now that the paperwork was not due until September 6, 2024. Ms. Harlos herself admitted in emails to the Reconciliation Committee that there was no urgency. Yet Ms. Harlos had an agenda, and she did what she wanted to do without an ounce of consideration for the downstream effects of her actions.

The LNC has been held hostage by Ms. Harlos since July 2024. We are hardly able to accomplish any other business because of her and her alone. Boards of directors exist all over the world and toxic board members are not uncommon. Removing such a member can be necessary to preserve the integrity of the organization and ensure it is able to accomplish its purpose.

Online you can find a list of traits that a "toxic board member" might have, such as:

- Consistent disruptive behavior: A toxic board member disrupts meetings and discussions, diverting attention from critical issues. They may frequently interject with unrelated or controversial topics, making it challenging to maintain a productive atmosphere.
- Lack of collaboration: Collaboration is paramount for effective board governance. Toxic board members tend to resist collaboration, preferring to work in isolation or pursue their agendas independently of the board's collective decisions.
- Pursuing a personal agenda: Toxic board members may put personal or hidden agendas first over the organization's best interests. This behavior can lead to decisions that benefit them personally but harm the organization.
- Undermining board leadership: A toxic board member might challenge the authority and decisions of board leadership, such as the chairperson or CEO.

This act undermines the chain of command and creates confusion within the board.

- Consistent negativity and pessimism: Toxic board members exhibit a consistently pessimistic outlook, dwelling on problems without offering constructive solutions. Their attitude can create a toxic atmosphere within the board.
- Breach of confidentiality: Maintaining confidentiality is critical in board discussions, as sensitive information is often shared. A toxic board member may disclose confidential information to external parties or use it against other board members.
- Insubordination: A toxic board member may display defiant behavior by openly ignoring board decisions or refusing to follow established protocols and processes.
- Hostility and personal attacks: In extreme cases, toxic board members may resort to verbal, emotional, or physical violence against other board members or the organization's leadership. Such behavior can poison the working relationships within the board.

I submit to the Judicial Committee that Ms. Harlos' behavior since at least July 1, 2024 meets every one of these bullet points. If this does not meet the definition of "cause," then I do not know what does. If you believe that the LNC should not have any power to remove those who impede its ability to engage in meaningful work, then it should not be a surprise to anyone why the party is where it is.

5. <u>Mr. Seebeck Should Recuse Himself</u>

I urge the members of the Judicial Committee, and Mr. Seebeck in particular, to consider his recusal. Mr. Seebeck is one of Ms. Harlos' "best friends" and regularly appears on her YouTube channel. He makes disparaging comments about the LNC on his public X account and donated directly to Ms. Harlos via Superchat in her pre-trial livestream on November 8, 2024. Several examples of such comments are attached hereto as "EXHIBIT E." Mr. Seebeck also has a vested interest in LPCO and, as an author of its bylaws, appears personally offended by LPCO's recent, relevant actions. Mr. Seebeck has made similar comments on various internet blogs that discuss third party politics. LPCO's tangential involvement in the actions precipitating this appeal should be enough to question Mr. Seebeck's ability to remain impartial.

I do not believe it is any coincidence that Mr. Seebeck's opinions fall directly in line with Ms. Harlos' requested relief every time such an appeal has come before this body. If Ms. Harlos believes that the Investigatory Committee was biased against her, then she should have no problem acknowledging Mr. Seebeck's bias in her favor. The appearance of impropriety in this organization's judicial body should be a matter of grave concern.

6. The Balch Opinion Calls the LPCO Bylaws into Question

Less relevant to this appeal, but still of note nonetheless, is the parliamentary opinion that Ms. Harlos received from Mr. Thomas Balch, attached hereto as "EXHIBIT F." In Section (III) of Mr. Balch's opinion, he states the following:

> *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 Pary* [sic] *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.*

Based on the above analysis, neither Chase Oliver nor Michael Ter Maat was eligible for nomination by the state party for any partisan office in Colorado. While I did not agree with LPCO's idea that they could place RFK Jr. on their ballot, according to Mr. Balch, Ms. Harlos violated LPCO's bylaws by placing Mr. Oliver and Mr. Ter Maat on the ballot.

Mr. Balch's analysis also presents more problems for LPCO, as Amendment XII of the United States Constitution states that the President and Vice President cannot be inhabitants of the same state. Either Mr. Balch is wrong, or the LPCO must amend their bylaws. It is surprising that the authors of the LPCO's bylaws would miss this.

Date: December 12, 2024

Respectfully submitted,

Meredith Hays
Libertarian National Committee
Region 4 Representative

EXHIBIT A

Amicus Curiae Brief of Meredith Hays in Support of Respondent
Re: Suspension of LNC Secretary Caryn Ann Harlos

4:17

CH

Caryn Ann

Fri, Jul 12 at 9:39 PM

Hiii - so I've been trying to stay quiet and observe what's been going on this last week or so. Is there any chance we could talk this weekend? I've got a brief due Monday so I'm working most of the weekend but I'll make time for you whenever you have it

If not, I totally understand.

[redacted]

Gimme a sec to find my headphones

iMessage

EXHIBIT B

Amicus Curiae Brief of Meredith Hays in Support of Respondent
Re: Suspension of LNC Secretary Caryn Ann Harlos

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

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Filed: August 28, 2024

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Re: Case No. 23-1856*, Libertarian Natl Comm, Inc. v. Michael Saliba, et al*
Originating Case No. : 5:23-cv-11074

Dear Counsel,

The court today announced its decision in the above-styled case.

Enclosed is a copy of the court's published opinion together with the judgment which has been entered in conformity with Rule 36, Federal Rules of Appellate Procedure.

Yours very truly,

Kelly L. Stephens, Clerk

Cathryn Lovely
Deputy Clerk

cc: Ms. Kinikia D. Essix

Enclosures

Mandate to issue.

RECOMMENDED FOR PUBLICATION
Pursuant to Sixth Circuit I.O.P. 32.1(b)

File Name: 24a0205p.06

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

LIBERTARIAN NATIONAL COMMITTEE, INC.,
Plaintiff-Appellee,

v.

MICHAEL J. SALIBA; RAFAEL WOLF; GREG STEMPFLE; ANGELA THORNTON-CANNY; JAMI VAN ALSTINE; MARY BUZUMA; DAVID CANNY; JOSEPH BRUNGARDT,
Defendants-Appellants.

No. 23-1856

Appeal from the United States District Court for the Eastern District of Michigan at Ann Arbor.
No. 5:23-cv-11074—Judith E. Levy, District Judge.

Argued: June 11, 2024

Decided and Filed: August 28, 2024

Before: COLE, GIBBONS, and READLER, Circuit Judges.

COUNSEL

ARGUED: Lena Shapiro, Lilian Alexandrova, Jonathan Resnick, UNIVERSITY OF ILLINOIS COLLEGE OF LAW, Champaign, Illinois, for Appellants. Joseph J. Zito, DNL ZITO CASTELLANO, Washington, D.C., for Appellee. **ON BRIEF:** Lena Shapiro, Lilian Alexandrova, Jonathan Resnick, UNIVERSITY OF ILLINOIS COLLEGE OF LAW, Champaign, Illinois, C. Nicholas Curcio, CURCIO LAW FIRM, PLC, Nuncia, Michigan, for Appellants. Joseph J. Zito, DNL ZITO CASTELLANO, Washington, D.C., for Appellee. Rebecca Tushnet, HARVARD LAW SCHOOL, Cambridge, Massachusetts, for Amici Curiae.

OPINION

JULIA SMITH GIBBONS, Circuit Judge. This trademark action arises out of a dispute within the Libertarian Party of Michigan (referred to by name or as the "Michigan affiliate"). The Libertarian National Committee, Inc. ("LNC") sued dissenting members of the Michigan affiliate—mainly former officers of the affiliate or board members of local parties—for using the LNC's trademark to hold themselves out as the official Michigan affiliate after a turnover of power resulted in two factions claiming to hold power. The district court granted the LNC's request to preliminarily enjoin the dissenting members' use of the mark, and the dissenting members appealed. They argue that the district court's application of the Lanham Act to the context of noncommercial speech both unduly expands the Act and violates the First Amendment. Even if the Lanham Act covers the dissenting members' use of the trademark, they argue that their use was authorized and not likely to cause confusion. We affirm in part and vacate in part the preliminary injunction.

I.

In 2022, two top officers of the Libertarian Party of Michigan resigned, expressing concern about a perceived shift in the ideology of the Libertarian Party's controlling caucus. After these resignations, the third most senior member, Andrew Chadderdon, became acting Chair of the Michigan affiliate. Chadderdon was reportedly unpopular within the affiliate—especially with defendants, and his ascendance caused a dispute over the identity of the rightful leadership of the Michigan affiliate. Dissatisfied with his leadership, defendants voted to remove Chadderdon from his executive committee position and then got elected to committee positions themselves. Then, the Libertarian Party Judicial Committee determined that the election violated the applicable bylaws. It reinstated Chadderdon and voided the executive appointments, including those of defendants, that resulted from the vote. Defendants contest the validity of the Judicial Committee's action and view themselves as the rightful executive board members of the Libertarian Party of Michigan.

The LNC sided with Chadderdon and the Judicial Committee, with the LNC's Chair, Angela McArdle, informing defendant Joseph Brungardt that his representation of being the Chair of the Libertarian Party of Michigan was "patently false." DE 12-10, McArdle Email, Page ID 474. McArdle further directed Brungardt to stop using the LNC's trademarks to promote what the LNC viewed as an offshoot political party and an unauthorized convention.[1] After receiving McArdle's letter and a cease-and-desist order, defendants admit that they continued to use the LNC's registered trademarks to hold themselves out *as* the official Libertarian Party of Michigan in connection with soliciting donations, filing campaign finance paperwork, and promulgating platform positions, endorsements, and commentary critical of the Chadderdon-chaired group.

The LNC sued, bringing various claims of trademark infringement in federal court. The LNC then moved for a preliminary injunction barring defendants from continuing to use the LNC's mark. After holding a hearing, the district court granted the LNC's motion to enjoin defendants from using the trademark. Defendants timely appealed.[2]

II.

A district court's decision to grant or deny a preliminary injunction involves consideration of four factors: (1) whether the movant demonstrated "a strong likelihood of success on the merits; (2) whether the movant would suffer irreparable injury absent the injunction; (3) whether the injunction would cause substantial harm to others; and (4) whether the public interest would be served by the issuance of an injunction." *Bays v. City of Fairborn*, 668 F.3d 814, 818–19 (6th Cir. 2012).

We typically review a district court's decision to grant a preliminary injunction for abuse of discretion. *Taubman Co. v. Webfeats*, 319 F.3d 770, 774 (6th Cir. 2003). In line with this

[1]The LNC owns of the following trademarks: Reg. No. 2,423,459, "Libertarian Party," and Reg. No. 6,037,046, made up of the word, "Libertarian," accompanied by an icon depicting a torch and an eagle. During the course of this suit, the parties jointly stipulated that defendants would not use the mark depicting a torch and eagle during the pendency of the proceedings. Only defendants' use of the first "Libertarian Party" mark remains at issue.

[2]In a separate order, the district court also denied defendants' subsequent request to stay the injunction pending this appeal.

standard, we "review the district court's legal conclusions de novo and its factual findings for clear error." *Id.* (quoting *Owner-Operator Indep. Drivers Ass'n v. Bissell*, 210 F.3d 595, 597 (6th Cir. 2000)). The movant's likelihood of success on the merits is a question of law which we review de novo. *See A.C.L.U. Fund of Mich. v. Livingston County*, 796 F.3d 636, 642 (6th Cir. 2015). In a trademark infringement action, the first factor is typically dispositive of the validity of the preliminary injunction. *See PGP, LLC v. TPII, LLC*, 734 F. App'x 330, 332 (6th Cir. 2018); *see also Wynn Oil Co. v. Am. Way Serv. Corp.*, 943 F.2d 595, 608 (6th Cir. 1991). Because the district court rested its irreparable harm and public interest determinations on the LNC's likelihood of success on the merits, we find the likelihood of success element dispositive.

III.

This case largely turns on whether defendants' use of the LNC's mark to, among other things, solicit party donations, fill out campaign finance paperwork, advertise events, and espouse political platform positions and commentary falls within the scope of the Lanham Act. The Lanham Act imposes liability on:

> (1) Any person who shall, without the consent of the registrant—
>
> > use in commerce any reproduction, counterfeit, copy, or colorable imitation of a registered mark in connection with the sale, offering for sale, distribution, or advertising of any goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive . . . .

15 U.S.C. § 1114(1)(a).

Thus, a plaintiff alleging trademark infringement must show that: "(1) it owns the registered trademark; (2) the defendant used the mark in commerce; and (3) the use was likely to cause confusion." *Hensley Mfg. v. ProPride, Inc.*, 579 F.3d 603, 609 (6th Cir. 2009) (citing § 1114(1)).

A.

Defendants first argue that they did not use the LNC's trademark "in connection with the sale . . . or advertising of any goods or services" as required by the Act. 15 U.S.C. § 1114(1)(a). They contend that, because the Lanham Act regulates trademark infringement only in

commercial speech as defined in the First Amendment context, their use of the LNC's trademark in the course of political speech falls outside the Act's reach. For this position, defendants primarily rely on *Taubman Co. v. Webfeats*, 319 F.3d 770 (6th Cir. 2003), which discussed the interplay between the First Amendment and the Lanham Act in the context of a defendant's use of a trademark to discuss and critique the trademark's owner. Contrary to defendants' position, we do not think *Taubman* resolves this case.

In *Taubman*, this Circuit addressed the use of a shopping mall's trademark in domain names by the creator of a "fan site" and, after the relationship between the parties soured, a gripe site for that mall. 319 F.3d at 772. The website creator contended that his purpose for using the mall's trademark in his websites was expressive rather than commercial, and thus outside of the realm of the Lanham Act and protected by the First Amendment. *Id.* at 774–76. In combatting the defendant's allegation that the Lanham Act conflicted with the First Amendment, the *Taubman* Court reasoned that the Lanham Act is constitutionally sound "because it only regulates commercial speech, which is entitled to reduced protections under the First Amendment." *Id.* at 774 (citing *Central Hudson Gas & Elec. Corp. v. Pub. Serv. Comm'n of New York*, 447 U.S. 557, 563 (1980)). The court construed this limitation as statutory, stating that "any expression embodying the use of a mark not 'in connection with the sale . . . or advertising of any goods or services,' . . . is outside the jurisdiction of the Lanham Act and necessarily protected by the First Amendment." *Id.* at 775 (quoting § 1114(1)).

Applying these strictures, *Taubman* held that the defendant's use of the trademark in connection with a website that displayed advertisements for his and his girlfriend's businesses was commercial and thus able to be regulated under the Lanham Act. *Id.* But after the defendant removed the advertisements and stipulated against future use, the court found the trademark use no longer "'in connection with the advertising' of goods and services" and thus no longer within the scope of the Act. *Id.* With no ongoing violation, the court deemed an injunction inappropriate. *Id.* *Taubman* then contemplated the First Amendment in the context of the defendant's second website—his gripe site, "taubmansucks.com." *Id.* at 777–78. Rejecting the shopping mall's trademark claim yet again, the court found the defendant's use protected by the First Amendment as "critical commentary" that created "no confusion as to source." *Id.* at 778.

Thus, the use was "purely an exhibition of Free Speech" and "not subject to scrutiny under the Lanham Act." *Id.*

In explaining why the defendant's use of the mall's mark was protected expression, the *Taubman* Court expounded that the defendant used the mark to comment on the trademark holder—not "to designate source." *Jack Daniel's Properties, Inc. v. VIP Prods. LLC*, 599 U.S. 140, 155 (2023); *Taubman*, 319 F.3d at 778. In other words, the defendant did not use the mark to pass off the goods or services advertised on his website as those of the shopping mall. *Taubman*, 319 F.3d at 778.

Since *Taubman*, the Supreme Court has explained how the Lanham Act and the First Amendment interact when a defendant uses a trademark to misrepresent his or her goods or services as those of or associated with the trademark owner. Just last year, the Court noted that where a defendant uses a trademark as a source identifier, "[t]he trademark law generally prevails over the First Amendment." *Jack Daniel's Properties*, 599 U.S. at 159 (quoting *Yankee Publ'g Inc. v. News Am. Publ'g Inc.*, 809 F. Supp. 267, 276 (S.D.N.Y. 1992)). This is because use of a trademark as a source identifier undermines the primary function of trademark law, which is to prevent "misinformation[] about who is responsible for a product" or service. *Id.* at 157. Such is true even where the defendant's use of the mark also conveys an expressive message. *Cf. San Francisco Arts & Athletics, Inc. v. U.S. Olympic Comm.*, 483 U.S. 522, 536, 541 & n.19 (1987) ("The mere fact that the [nonprofit defendant] claims an expressive, as opposed to a purely commercial purpose does not give it a First Amendment right to appropriate to itself the harvest of those who have sown.") (cleaned up). In that circumstance, "the likelihood-of-confusion inquiry does enough work to account for the interest in free expression." *Jack Daniel's Properties*, 599 U.S. at 159.

We take this opportunity to clarify that *Taubman*'s language limiting the Lanham Act's coverage, while implicated where a defendant uses the mark purely for protected expression, like satire, critique, or commentary, does not prohibit application of the Lanham Act to a defendant who uses the trademark to identify the source of his or her competing goods or services. *Cf. Taubman*, 319 F.3d at 778 (finding the website creator's trademark use, which created "no confusion as to source," "purely an exhibition of Free Speech"). Because the defendants here

used the LNC's trademark to speak *as* the Libertarian Party of Michigan, defendants used the mark to designate the source of their political services as affiliated with the LNC, thus implicating "the core concerns of trademark law" and rendering *Taubman* inapposite. *Jack Daniel's Properties*, 599 U.S. at 157 (citation omitted); *cf. Taubman*, 319 F.3d at 778 ("[T]he First Amendment protects critical commentary *when there is no confusion as to source*.") (emphasis added).

Defendants resist this conclusion by emphasizing that *Jack Daniel's Properties* contemplated trademark infringement in the context of commercial products—a context in which trademark law traditionally and comfortably operates. True, trademark law was designed to combat potential consumer confusion and the theft of the trademark owner's goodwill in the context of commercial sales. *See Jack Daniel's Properties*, 599 U.S. at 156–57 (discussing the function of trademarks in terms of producers and manufacturers). And we acknowledge that outside of the facts before us, speech rendered in connection with the provision of political services typically constitutes political speech awarded heightened protection under the First Amendment. *See Fed. Election Comm'n v. Cruz*, 596 U.S. 289, 302 (2022) (detailing the extent of First Amendment protection in the context of political campaigns). But we find support in *Jack Daniel's Properties* for our position that, in the narrow context where a defendant uses the trademark as a source identifier, the Lanham Act does not offend the First Amendment by imposing liability in the political arena.

While explaining why a predicate First Amendment test, rather than ordinary trademark scrutiny, does not apply when a defendant uses a trademark as a source identifier, *Jack Daniel's Properties* cited a case remarkably similar to the case at hand. 599 U.S. at 155. In *United We Stand America, Inc. v. United We Stand, America New York, Inc.*, the Second Circuit contemplated a trademark infringement action by United We Stand America, Inc., which owned the slogan, "United We Stand America." 128 F.3d 86, 88 (2d Cir. 1997). After friction within the group, the defendant created an offshoot political coalition, "United We Stand, America New York, Inc." which also used the slogan to engage in political activities. *Id.* The Second Circuit deemed the defendant's trademark use within the scope of the Lanham Act and outside the protection of the First Amendment because the offshoot group used the trademark "as a source

identifier" for the group's political services rather than to pose "commentary on [the trademark's] owner." *Id.* at 92. Accordingly, such use subjected the defendant to Lanham Act liability even though the offshoot coalition "might communicate its political message more effectively by appropriating [the trademark]." *Id.* at 93.

The Supreme Court cited *United We Stand* with approval of the Second Circuit's decision to apply ordinary trademark scrutiny even though the defendant's use of the slogan also "had expressive content." *Jack Daniel's Properties*, 599 U.S. at 155. Because the offshoot political coalition used the trademark "to suggest the 'same source identification' as the original 'political movement,'" such use was not insulated from Lanham Act liability. *Id.* (quoting *United We Stand*, 128 F.3d at 93). We find the Supreme Court and the Second Circuit's reasoning persuasive. Focusing on the use of a trademark as a source identifier adequately accounts for the core interests undergirding trademark law without "suck[ing] in speech on political and social issues through some strained or tangential association with a commercial or transactional activity." *Radiance Found., Inc. v. N.A.A.C.P.*, 786 F.3d 316, 323 (4th Cir. 2015). Thus, in the narrow context before us, where a defendant uses a trademark as a source identifier, we find the extension of the Lanham Act into the political sphere appropriate.

Defendants next contend that, as a political entity, they do not render the type of services included in the scope of the Lanham Act. Accordingly, they argue, their use of the LNC's mark in connection with these services is not prohibited by the Lanham Act. A "service" is an "amorphous concept, 'denot[ing] an intangible commodity in the form of human effort, such as labor, skill, or advice.'" *Id.* (citation omitted). As defendants used the LNC's trademark to advertise a political convention, operate a website, promulgate political news and party activities, file campaign finance reports, endorse candidates, and solicit donations, they "unquestionably render[ed] a service" contemplated by § 1114(1)(a). *United We Stand*, 128 F.3d at 90 (finding "services characteristically rendered by a political party to and for its members, adherents, and candidates," like political organizing, maintaining an office, endorsing candidates, and distributing partisan material to be "services" under the Lanham Act); *see also Wash. State Republican Party v. Wash. State Grange*, 676 F.3d 784, 795 (9th Cir. 2012) ("The Libertarian Party correctly points out that 'services' can include activities performed by a political party.").

Courts have long construed the Lanham Act's requirement that a defendant use a trademark in connection with the advertisement of "any goods or services" to encompass trademark infringement by political or nonprofit defendants. *See United We Stand*, 128 F.3d at 89–90 (citing *N.A.A.C.P. v. N.A.A.C.P. Legal Def. & Educ. Fund*, 559 F. Supp. 1337, 1342 (D.D.C. 1983), *rev'd on other grounds*, 753 F.2d 131 (D.C. Cir. 1985)); *Am. Diabetes Ass'n, Inc. v. Nat'l Diabetes Ass'n*, 533 F. Supp. 16, 20–21 (E.D. Pa. 1981) (applying Lanham Act to nonprofit's use of competing nonprofit's trademark to solicit donations), *aff'd*, 681 F.2d 804 (3d Cir. 1982) (Table); *U.S. Jaycees v. Phila. Jaycees*, 639 F.2d 134, 146 (3d Cir. 1981) (enjoining disaffiliated civic group from using trademark of national group after ideological split); *cf. U.S. Jaycees v. S.F. Jr. Chamber of Com.*, 354 F. Supp. 61, 71 (N.D. Cal. 1972) (agreeing that "benevolent, religious, charitable or fraternal organizations" are entitled to injunctive relief in the context of a common law unfair competition claim when local chapters disaffiliate but continue to use the organization's name), *aff'd*, 513 F.2d 1226 (9th Cir. 1975) (per curiam).[3] This history reflects the longstanding recognition that "[t]he protection of the trademark or service mark of non-profit and public service organizations," just as for for-profit entities, "requires that use of the mark by competing organizations be prohibited." *United We Stand*, 128 F.3d at 89; *see also* 1 McCarthy on Trademarks and Unfair Competition § 9:6 (5th ed. 2024) ("Names of professional and fraternal organizations are given the same protection against confusing use of their names as is given to business corporations. . . . Protection is [also] extended to the names of nonprofit political groups . . .").

And because defendants used the LNC's mark to identify the source of these services, they used the mark "in connection with" the advertising or distribution of services within the scope of the Lanham Act. *See* 15 U.S.C. § 1114(1)(a); *see also Radiance Found.*, 786 F.3d at

[3]District courts have also applied the Lanham Act to enjoin unions and political actors from using trademarks as source identifiers in the provision of services. *See Brach Van Houten Holding, Inc. v. Save Brach's Coal. for Chi.*, 856 F. Supp. 472, 475–77 (N.D. Ill. 1994) (defendant advocacy group's use of trademark in the provision of advocacy services for workers constituted "service[s]" within the meaning of the Lanham Act); *Republican Nat'l Comm. v. Canegata*, No. 3:22-cv-0037, 2022 WL 3226624, at *3–9 (D.V.I. Aug. 10, 2022) (enjoining former chairman of local Republican party who continued to portray himself as the chairman from using RNC trademarks); *Partido Revolucionario Dominicano (PRD) Seccional Metropolitana de Washington-DC, Maryland y Virginia v. Partido Revolucionario Dominicano, Seccional de Maryland y Virginia*, 312 F. Supp. 2d 1, 10–16 (D.D.C. 2004) (enjoining offshoot political chapter from using trademarked name to offer political services and noting that Lanham Act "protections extend to the names and symbols related to political organizations").

323 ("[I]f in the context of a sale, distribution, or advertisement, a mark is used as a source identifier, we can confidently state that the use is 'in connection with' the activity."). Defendants assert that this finding conflicts with almost every other circuit to consider the matter. But we find this to be an overstatement. As discussed above, we are not the first to apply the Lanham Act against nonprofit or even political defendants rendering services. And the cases identified by defendants are readily distinguishable: they dealt with defendants using trademarks to engage in social commentary about the trademark holder's goods or services—not for source identification of their own.

For example, the Ninth Circuit in *Bosley Medical Institute, Inc. v. Kremer* deemed a defendant's use of a trademark in a domain name of a website created to complain about the trademark holder's services not "in connection with a sale of goods or services" and thus not prohibited by the Lanham Act. 403 F.3d 672, 677–80 (9th Cir. 2005). Like other courts, it held that the Lanham Act simply did not seek to protect against an infringer who is not the trademark holder's competitor, but rather its critic. *Id.* at 679; *see also Utah Lighthouse Ministry v. Found. For Apologetic Info. & Research*, 527 F.3d 1045, 1053–54 (10th Cir. 2008) (addressing different section of the Lanham Act and finding the use of a trademark to create a parody website outside the Act's scope as "merely . . . a comment on the trademark owner's goods or services" rather than a use "in connection with the goods or services of a competing producer"); *Farah v. Esquire Magazine*, 736 F.3d 528, 541 (D.C. Cir. 2013) (assessing different section of the Lanham Act and finding that a defendant's use of a trademark in a satirical article about the trademark holders' political positions constituted "political speech" rather than the promotion of competing goods or services); *Radiance Found.*, 786 F.3d at 327–30 (finding the use of the NAACP's name in an article title criticizing the organization's stance on abortion not actionable).

Although many of these cases framed the inquiry into whether the defendant's trademark use was commercial, common to all these cases is the absence of the fact we find dispositive here: that the defendant's trademark use served a source identification, rather than expressive, end. *See, e.g.*, *Utah Lighthouse Ministry*, 527 F.3d at 1054 ("Unless there is a competing good or service labeled or associated with the plaintiff's trademark, the concerns of the Lanham Act are not invoked."); *cf.* McCarthy on Trademarks and Unfair Competition § 9:6 (5th ed. 2024)

(explaining that while § 43(a) contains a commercial activity requirement, the text of § 32(1)(a) (15 U.S.C. § 1114) does not). These cases are accordingly inapposite here, where the Lanham Act serves to prevent defendants from using the LNC's mark in connection with advertising and distributing their own political services *as* an entity affiliated with the LNC—not "in connection with the expression of [their] opinion *about*" the services of the LNC. *Bosley Med. Inst.*, 403 F.3d at 679; *cf. Radiance Found.*, 786 F.3d at 327 (positing that a nonprofit's use of a trademark to further activities like donation solicitation may satisfy the Lanham Act's "in connection with" requirement if the trademark denotes the source of the donation recipient). Thus, we remain convinced that the First Amendment tolerates the Lanham Act's interjection to prevent use of a trademark as a source identifier in a manner that creates confusion as to the source of the defendant's political services.[4]

B.

Having found that that the Lanham Act can constitutionally apply to defendants' use of the LNC's mark, we next consider the other two elements of a Lanham Act claim: whether defendants' use was unauthorized and likely to cause confusion.

The Lanham Act prohibits the use of a trademark "without the consent of the registrant." 15 U.S.C. § 1114(1). In the context of a franchisee-franchisor relationship, courts have found that the plaintiff-franchisor must demonstrate that it properly terminated any license held by the defendant-franchisee to use the plaintiff's trademarks to support a finding that the defendant's use was truly unauthorized. *See, e.g.*, *McDonald's Corp. v. Robertson*, 147 F.3d 1301, 1308 (11th Cir. 1998). Here, defendants argue that they have a right to use the LNC's trademark as the Michigan affiliate through the licensing regime set out in the party's bylaws. Since the LNC did not follow the procedure set out in its bylaws to revoke the Michigan affiliate's license,

[4]In finding this application of the Lanham Act in harmony with the First Amendment, we reject defendants' argument that the injunction here presents an unlawful prior restraint on speech. While defendants describe the injunction as sweeping in any criticism of the LNC or Libertarian Party of Michigan, that is simply not the case. The district court clarified that the injunction merely prohibits defendants from identifying *as* the Libertarian Party of Michigan in the provision of services, it does not prevent them from identifying as members of the Libertarian Party or the Michigan affiliate, or from using the trademark to criticize or comment on either entity. We emphasize again that the Lanham Act does not restrict defendants' ability to engage in political speech. It merely restricts defendants from using the LNC's trademark to identify *as* the Libertarian Party of Michigan in connection with providing or advertising their own political services.

defendants argue that the license renders the LNC unable to show that defendants' continued use was unauthorized. *See id.*; *see also Re/Max North Cent., Inc. v. Cook*, 272 F.3d 424, 430 (7th Cir. 2001); *Little Caesar Enter., Inc. v. Miramar Quick Serv. Rest. Corp.*, No. 19-1860, 2020 WL 4516289, at *3 (6th Cir. June 25, 2020). We find this argument unavailing.

Contrary to defendants' argument, the LNC did not have to show that it disaffiliated the Libertarian Party of Michigan to show that defendants' continued trademark use was unauthorized. The issue in this case is not whether the Michigan affiliate still possesses a license to use the LNC's trademark. It does. The LNC still recognizes a faction as the Libertarian Party of Michigan and allows the organization it recognizes to use the LNC's trademarks to identify itself. The LNC alleges that it notified defendants that they lack a license to use the LNC's trademark to speak *as* the Michigan affiliate precisely because the LNC does not recognize them as the licensed affiliate's leadership. *See* DE 12-7, Libertarian Party Bylaws, Page ID 454 ("There shall be no more than one state-level affiliate party in any one state.").

Whether the LNC's recognition of Chadderdon's group as the affiliate leadership is right or wrong, the cease-and-desist order conveying such recognition is sufficient to establish that defendants' continued use was unauthorized. Defendants, as individual members of the Michigan affiliate, do not possess a contractual right to use the trademarks to speak *as* the Michigan affiliate. Concluding otherwise would require that this panel find that the Judicial Committee's decision reinstating the Chadderdon-led team into their leadership roles was improper, that the LNC's recognition of the Chadderdon faction as the real Michigan affiliate was wrong, and that defendants are the rightful Michigan affiliate leadership. Resolution of these issues is outside the scope of this case, and, in any event, would pose serious justiciability concerns. *See Heitmanis v. Austin*, 899 F.2d 521, 525 (6th Cir. 1990) (explaining courts' history of "reluctan[ce] to intervene in intra-party disputes").

C.

To succeed on its infringement claims, the LNC must lastly show that defendants used the trademark in a manner likely to cause confusion to consumers about the source of defendants' goods or services. *See* 15 U.S.C. § 1114(1)(a); *Taubman*, 319 F.3d at 776. For the

following reasons, we find that defendants' use of the trademark in the provision of political services (for example, the maintenance of a website containing political platforms, endorsing candidates, and filing campaign finance reports) creates a sufficient likelihood of confusion, but that defendants' use of the mark in connection with online solicitation, when accompanied by an appropriate disclaimer, does not.

"If different organizations were permitted to employ the same trade name in endorsing candidates, voters would be unable to derive any significance from an endorsement, as they would not know whether the endorsement came from the organization whose objectives they shared or from another organization using the same name." *United We Stand America*, 128 F.3d at 90. Thus, we agree with the district court that defendants' use of the LNC's trademark in connection with the provision of competing political services created a high likelihood of confusion for consumers, *i.e.*, potential voters, party members, and, in the case of solicitations not accompanied by a clear disclaimer, donors. *See All. for Good Gov't v. Coal. for Better Gov't*, 901 F.3d 498, 511 (5th Cir. 2018) (deeming voters who rely on political coalitions' endorsements the relevant "purchasers" of political services for assessing the confusion created by one coalition's use of a similar mark).

Defendants' use of the "Libertarian Party" mark meant that two different entities simultaneously held themselves out as the Libertarian Party of Michigan. A potential voter visiting defendants' website would not be able to tell if the platforms defendants espoused or events they advertised were actually affiliated with the Libertarian Party. *See id.* at 507–13 (finding political coalition's use of similar name and almost identical logo confusing); *see also Partido Revolucionario Dominicano (PRD) Seccional Metropolitana de Washington-DC, Maryland y Virginia*, 312 F. Supp. 2d at 13–16 (finding actual confusion in context of political groups using nearly identical names in advertising the sponsorship of events and affiliation with broader party). Given defendants' use of the LNC's exact mark in the provision of competing political services to the same target population, such risk is at play here. And this risk is not hypothetical—the LNC submitted at least some evidence of actual confusion about the sponsorship of competing conventions. This likelihood of confusion is sufficient to support a Lanham Act claim.

Defendants also used the LNC's trademark on their website to solicit donations. In connection with the donation tab, defendants displayed one of two pop-up disclaimers notifying the potential donor of the governance dispute, the LNC's recognition of the Chadderdon-led faction, and that any donations would be going solely to defendants. The disclaimers also included hyperlinks to the Chadderdon-led affiliate's website. By clearly explaining the identity of the donation recipient, these disclaimers ameliorated the confusion the Lanham Act seeks to prevent. *See Taubman*, 319 F.3d at 776–77 (noting that the relevant confusion concerns the source of the defendant's goods or services, not the source of the website). The disclaimers also resemble those we have previously found sufficient to eliminate a likelihood of confusion. *See id.* (citing *Holiday Inns, Inc. v. 800 Reservation Inc.*, 86 F.3d 619 (6th Cir. 1996)). Accordingly, defendants' use of the trademark in connection with their online solicitation of donations, when accompanied by appropriate disclaimers, does not create a sufficient likelihood of confusion as to the recipient of the funds and thus cannot be the predicate for Lanham Act liability. *See id.*; *see also Radiance Found.*, 786 F.3d at 328–29.

IV.

We affirm the preliminary injunction granted except as to defendants' online solicitation accompanied by clear disclaimers.

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 23-1856

LIBERTARIAN NATIONAL COMMITTEE, INC.,

Plaintiff - Appellee,

v.

MICHAEL J. SALIBA; RAFAEL WOLF; GREG STEMPFLE; ANGELA THORNTON-CANNY; JAMI VAN ALSTINE; MARY BUZUMA; DAVID CANNY; JOSEPH BRUNGARDT,

Defendants - Appellants.

Before: COLE, GIBBONS, and READLER, Circuit Judges.

JUDGMENT

On Appeal from the United States District Court
for the Eastern District of Michigan at Ann Arbor.

THIS CAUSE was heard on the record from the district court and was argued by counsel.

IN CONSIDERATION THEREOF, it is ORDERED that the district court's grant of the preliminary injunction is AFFIRMED IN PART and VACATED IN PART.

ENTERED BY ORDER OF THE COURT

Kelly L. Stephens, Clerk

EXHIBIT C

Amicus Curiae Brief of Meredith Hays in Support of Respondent
Re: Suspension of LNC Secretary Caryn Ann Harlos

Rebecca Whiting

This is the very beginning of your legendary conversation with Rebecca Whiting.

3 Mutual Servers

September 15, 2024

Meredith Hays... 09/15/2024 3:37 PM
Hey Rebecca, Angela told me you were possibly interested in helping to mediate with CAH. I think we need to.

EXHIBIT D

Amicus Curiae Brief of Meredith Hays in Support of Respondent
Re: Suspension of LNC Secretary Caryn Ann Harlos

Outlook

Request for co-sponsors: Direct staff to send certificates of nomination

From LP Secretary <secretary@lp.org>
Date Wed 7/10/2024 8:47 AM
To LNC Business <lnc-business@lp.org>; 4eb01eb9.lp.org@amer.teams.ms <4eb01eb9.lp.org@amer.teams.ms>; businesslist-forward <businesslist-forward@lp.org>

I request co-sponsors for the following motion:

More to direct staff to send the Certificate of Nominations to each Secretary of State/Bureau of Elections for each state in which we have not already done so and those for which we already have written confirmation that the State Chair has already done so or they have already received and acknowledged in order to put the Oliver/ter Maat ticket on the ballot. This should be fully accomplished within the next seven days.

In Liberty, Caryn Ann Harlos
LNC Secretary and LP Historical Preservation Committee Chair ~ 561.523.2250

EXHIBIT E

Amicus Curiae Brief of Meredith Hays in Support of Respondent
Re: Suspension of LNC Secretary Caryn Ann Harlos

Caryn Ann Harlos @... · 5d

Every single year it is asked for or they charge more to go through minutes and reports. Of course they couldn't ask me about it.

1 3 647

TheSeebeck 🗽

@MikeSeebeck

Follow

They disregard experience. It will cost them.

6:53 AM · 12/7/24 · **36** Views

1

Caryn Ann Harlos @... · 5d

Hannah Kennedy giving very good Ex Dir's report. If you want a card, she will get you one. Hannah talked about membership pool which was really respectful of bylaws which I appreciated.

Forgot to mention in Treasurer's report, I did not get final numbers but things not as Show more

2 3 733

TheSeebeck Follow

@MikeSeebeck

I've asked at least 3 times, unanswered by staff.

7:35 AM · 12/7/24 · **63** Views

Post your reply

possible.

9

Caryn Ann Harlos @... · 2d

Are you surprised? @LPCO blatantly broke its bylaws again by holding Platform and Bylaws meetings without notifying ALL of the members of those committees, meaning, null and void. Douglas County wrote them to give opportunity to cure before taking further action, which first Show more

3 3 27 1.5K

TheSeebeck 🗽 @Mi... · 2d

So they're screwing with our past work again...figures.

2 104

Elon Musk @elon... · 2d

Exactly

Mario Nawfal · 2d

GROK IS YOUR AI DOCTOR

6:28

Post

Caryn Ann Harlos

@carynannharlos

Follow

Elininating motion log which Malagon is ignorant that auditors ask for every year.

6:46 AM · 12/7/24 · **626** Views

2 6

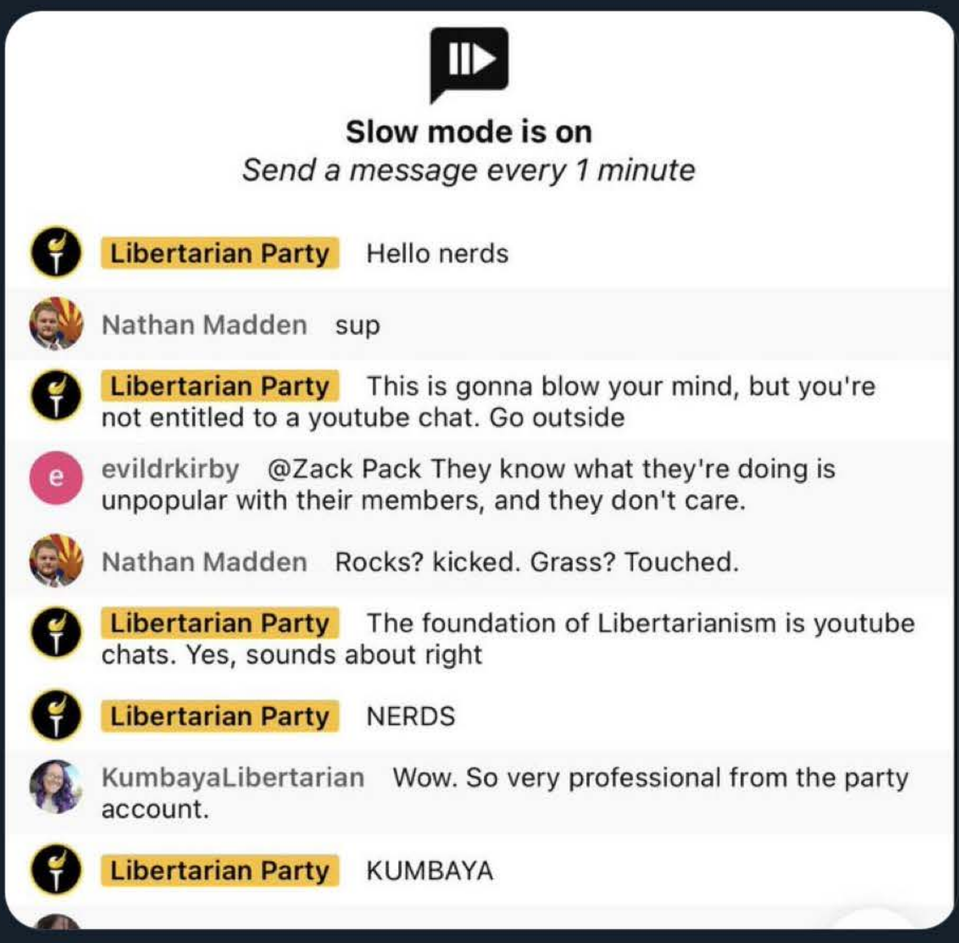
Most relevant replies

TheSeebeck 🗽 @Mi... · 5d

Corruption gotta coverup...

23

they claim I am badly behaved??????



15 7 58 4.2K

TheSeebeck @MikeSeebeck

Follow

Comments on YT now turned off.

I was right; they fear dissent.

9:07 AM · 12/7/24 · **146** Views

Post your reply

Live chat replay

Top messages

Live chat replay is on. Messages that appeared when the stream was live will show up here.

Emily Atwood Hi Caryn. I'm glad I am finally able to catch a Livestream.

Mike Seebeck **$10.00**

for a snow shovel.

Reply

Let's celebrate their 5th Super on a live stream

sylvia arrowwood remuneration or pay is also a factor in personnel.

EXHIBIT F

Amicus Curiae Brief of Meredith Hays in Support of Respondent
Re: Suspension of LNC Secretary Caryn Ann Harlos

Thomas J. Balch, J. D., PRP
Professional Registered Parliamentarian
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Fredericksburg, Virginia 22401-5180
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Balch@ParliamentarianThomasBalch.com 540-738-4905

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[1] 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

[1] 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 10th, 11th and current 12th editions of that book [hereafter cited as "RONR (12th 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 (12th 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 (12th 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 (12th 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 (12th ed.) 56:68(4).[2] 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

[2] 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 (12th 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 (12th 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 (12th 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 (12th 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 Pary 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.