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Mr. William Redpath, Chair
Libertarian Party
2600 Virginia Avenue, N.W. Suite 200
Washington, D.C. 20037

Dear Mr. Redpath:

This letter constitutes our professional opinion as parliamentarians concerning the following question with regard to the Libertarian Party: “One at-large member of the Libertarian National Committee has engaged in behavior that some National Committee members believe to be injurious to the party and its purposes. They desire to remove this member from the National Committee. What, in detail, is the correct procedure?”

This opinion is based on the Bylaws of the Libertarian Party, as adopted in convention May 2008, on the Judicial Committee Appellate Procedure Rules, adopted 1989, and on the current edition of *Robert's Rules of Order Newly Revised* (RONR),¹ which is the Society’s adopted parliamentary authority. Our qualifications for providing this opinion are that we are both members of the authorship team for the current edition of RONR, have been accorded the status of Professional Registered Parliamentarians (P.R.P.) by the National Association of Parliamentarians, and have each served as Parliamentarian for the National Association of Parliamentarians.

¹ Henry M. Robert III, William J. Evans, Daniel H. Honemann, & Thomas J. Balch, *Robert's Rules of Order Newly Revised*, 10th ed. (Cambridge, Ma.: Perseus, 2000).

Removal as a Member of the Libertarian National Committee—Role of National Committee.

Article 13 of the Libertarian Party Bylaws states, “The rules contained in the current edition of Robert's Rules of Order, Newly Revised shall govern the Party in all cases to which they are applicable and in which they are not inconsistent with these bylaws and any special rules of order adopted by the Party.” Chapter XX of the current edition of Robert’s Rules of Order Newly Revised contains rules governing disciplinary procedures. However, these are superseded by the specific procedures for suspension and removal of at-large members of the Libertarian National Committee provided in Article 8, Section 5 and in Article 9 of the Party Bylaws, as well as in the Judicial Committee Rules of Appellate Procedure to the extent these comply with the bylaws.

Article 8, Section 5 of the Libertarian Party Bylaws states, “The National Committee may, for cause, suspend any member-at-large by a vote of 2/3 of the entire National Committee.”

Several things are clear from this sentence read in the context of the rest of the article and in the light of *Robert’s Rules of Order Newly Revised*.

First, under the bylaws provision, apart from the super-majority vote requirement and the subsequent appeal, no special procedural requirements are applicable to the deliberations and action of the Libertarian National Committee on such a matter (unlike, for example, the special procedures contemplated by Chapter XX of RONR). Thus, for example, no notice of intent to move to suspend is required, no investigating committee need be appointed or report, and no trial need be held. As with any other main motion, a motion to suspend a member-at-large is debatable under the usual rules for debate and is amendable (for example, so as to substitute a lesser penalty such as a reprimand). See RONR (10th ed.), p. 98. To end debate and move to an immediate vote would require adoption of the previous question by a vote of two-thirds of those present and voting, RONR (10th ed.), pp. 189-201; otherwise to limit debate would require a similar vote, RONR (10th ed.), pp. 183-189.²

² The preceding two sentences are subject to the qualification that under Section 9 of Article 8, “The National Committee may, without meeting together, transact business by mail. . . on any question submitted by the Chair or by at least 1/5 of the members of the Committee.” The procedure there set forth, which calls for return of votes within fifteen days, does not appear to contemplate any possibility of amending a motion thus submitted. Any “debate” that could occur would presumably take the form of communications among National Committee members during

Second, although the motion is described by the bylaws as one to “suspend” the at-large member, because affirmation of the suspension by the Judicial Committee after appeal or failure to appeal within seven days effectively results in the office being “deemed vacant,” the motion in reality is one to remove from office which does not become finally effective until the appeals process is exhausted.

Third, the National Committee may only remove for “cause” but “cause” is left undefined, meaning that it is a matter for the sound judgment of the requisite number of members of the National Committee, subject to review by the Judicial Committee.

Fourth, the vote required is “2/3 of the entire National Committee.” The “entire National Committee” is functionally equivalent to what RONR calls the “entire membership,” defined as “the total number of those who are members of the voting body at the time of the vote.” RONR (10th ed.), p. 390, l. 25-27. Thus, for a motion to suspend an at-large member of the National Committee to prevail, it must receive an affirmative vote that equals or exceeds two-thirds of the total number of all the members of the National Committee, including the at-large member whose suspension is being sought and any members who are absent or abstaining, but not counting any vacancies. We are informed that there are 17 members of the National Committee now in office. If that is true at the time of such a vote, a minimum of 12 votes would be required.

One other point is pertinent. The last sentence of Section 1 of Article 8 states, “The National Committee may delegate its authority in any manner it deems necessary.” In light of the requirement that an at-large member may be removed (“suspended”) only by a two-thirds vote of all the members of the National Committee, theoretically the National Committee could delegate its authority to suspend an at-large member to some other entity, but the vote required for such a delegation would be that described in the preceding paragraph – that is (assuming there are 17 members of the National Committee in office at the time of the vote), a minimum of 12 votes would be required.

For example, continuing to assume there were 17 members of the National Committee in office, by a vote of 12 or more a resolution could be adopted that 1) directed an at-large member to issue an apology or take some other remedial action for stated offenses by a named date; 2) directed some other entity, pursuant

the 15-day period. In that context, motions for the previous question or to limit or extend the limits of debate have no apparent application.

to a delegation of power thereby authorized, thereafter to determine by majority³ vote whether the direction to apologize or take other remedial action was adequately complied with; and 3) provided that, if the designated entity determined that the directed apology or other remedial action was not adequately complied with, the at-large member would thereby automatically be suspended. In such a case, the time for appeal would run from the date of the designated entity's vote, rather than from the date of the National Committee vote, since the former would constitute the actual suspension.

Removal as a Member of the Libertarian National Committee– Role of Judicial Committee.

If a motion to suspend an at-large member of the National Committee is adopted, it is subject to appeal under the bylaws. "Failure to appeal within seven days shall confirm the suspension and bar any later challenge or appeal." Article 8, Section 5. As noted above, this effectively means that if there is no appeal within seven days after a vote to suspend an at-large member is adopted, the member is thereby removed as a member of the National Committee.

To prevent this, under the bylaws an appeal must be made in writing within seven days, and under the Judicial Committee Appellate Procedure Rules (authorized by Article 9, Section 3 of the bylaws) this written appeal must be submitted in seven copies to the Chair of the Judicial Committee, who has seven days to forward copies to the other members of the Judicial Committee.

Article 8, Section 5, provides, "The Judicial Committee shall set a date for hearing the appeal between 20 and 40 days of receipt of the appeal and shall notify all interested persons, which persons shall have the right to appear and present evidence and argument."

By contrast, outside the context of a National Convention, the Judicial Committee Appellate Rules make no provision for a hearing but only for a meeting, which the rules attempt to provide will normally be by teleconference, of the Judicial Committee members, as follows:

Committee members shall review all material they are sent within

³ It should be noted that in this example the finding by the other entity is only a factual determination whether the apology or other remedial action specified by the National Committee has been complied with and is not a decision to suspend, and that is the reason why only a majority vote is required by the entity.

seven days of receiving it, and each member shall contact the Chair, by phone and/or in writing, as soon as he or she has done so. Any member who wishes to contact other members directly may of course do so.

After the Chair has been contacted by at least two other Committee members, he or she shall set a time for a meeting of the Committee to decide the matter at hand. Unless a majority of the members request a physical gathering, the meeting shall take place by telephone conference. Members who are unable to participate in the meeting shall retain the right to vote by mail or by phone, provided their vote is transmitted to the Chair no later than 72 hours after the meeting.

A very important point must be noted in this connection. Because the language from the Appellate Rules quoted immediately above is clearly inconsistent with the bylaws in this context, it is necessarily superseded by the bylaws to the extent of the conflict. Thus, it remains the case that, in accordance with the rules, the Judicial Committee Chair must distribute copies of an appeal to the other members of the Judicial Committee within the seven-day period, and the other members must review the material and contact the Chair within seven days of receiving their copies of the appeal.

However, instead of setting a teleconference to decide the appeal, the Chair must instead set the date, time, and place for a hearing on the appeal – a date which must be set to occur within the window “between 20 and 40 days of receipt of the appeal.”

The question could be raised whether the Chair may set the hearing date or whether he or she must instead call a meeting of the Judicial Committee at which it must do so by majority vote. Under RONR (10th ed.), p. 483-84, a committee generally meets at the call of its chairman, unless it has adjourned to meet at a specific time. The bylaws provide that the “Judicial Committee shall set” the hearing date. The Judicial Committee Rules—adopted in accordance with Article 9, Section 3 of the bylaws—authorize the Chair to “convene” the committee for what amounts to a hearing during a convention, and of course to call meetings of the committee between conventions. As a hearing is a meeting of the committee, albeit of a special type, it appears that the manner in which the Judicial Committee sets a hearing date may be by its Chair alone issuing a call for a Committee meeting that will include the conduct of a hearing during the meeting.

Although the Judicial Committee Rules specify that the “meeting” to be called by the Chair is to be a teleconference unless a majority of the Judicial Committee’s members request a physical gathering, the absence of such an applicable authorizing provision in the *bylaws* has, as we have already stated, a superseding effect which renders the section of the Judicial Committee Appellate Procedure Rules calling for a meeting by teleconference invalid. Under RONR (10th ed.), p. 482, 1. 28-30, only the *bylaws* (or higher-ranking rules) may make such provision. Consequently, the hearing in this case must be a physical gathering in “one room or area.” RONR (10th ed.), p. 79.

The bylaws require that the Judicial Committee “shall notify all interested persons [of the hearing], which persons shall have the right to appear and present evidence and argument.” In this context, “all interested persons” evidently means all members of the National Committee.

At the hearing, therefore, all members of the National Committee who choose to do so must be able to attend, and present evidence if they wish (naturally including the at-large member who has been suspended). The exact process for hearing this evidence is not spelled out in the bylaws or in the Judicial Committee Appellate Procedure Rules. Since it is an appellate procedure, there is no basis for assuming that it need proceed in the form of a trial as delineated in Chapter XX of RONR. If a custom has been established by past practice, that should be followed. If not, the Judicial Committee may conduct the process according to a reasonable and fair approach (for example, with respect to reasonable time limits on testimony) that allows the hearing to proceed in an orderly fashion that preserves an adequate opportunity to be heard.

A quorum of the Judicial Committee is five of its members. Article 9, Section 1. Should the Committee fail to obtain a quorum, it should be called to order, whereupon measures may be taken to secure a quorum, the meeting may be recessed, an adjourned meeting may be scheduled, and the meeting may be adjourned, but no substantive business may be transacted. RONR (10th ed.), p. 336-37. If no hearing can garner a quorum within the required time limits, the suspension is upheld and becomes a removal.

Since “At the hearing the burden of persuasion shall rest upon the appellant,” the Judicial Committee begins with a presumption in favor of the judgment of the National Committee and is to give the benefit of the doubt to that judgment. After the appellant and other members of the National Committee wishing to do so have been afforded the opportunity to present their argument and evidence, the hearing proper is adjourned. The Judicial Committee’s own

deliberations and vote are conducted in executive session, that is, with no one but members of the Judicial Committee present. RONR (10th ed.), p. 483.

In accordance with Article 8, Section 5 of the bylaws, the Judicial Committee has the period within 30 days of the hearing either to affirm the suspension (thus creating a vacancy, effectively transforming the suspension into a removal) or to reinstate the at-large member; a failure to meet the deadline affirms the suspension and effects the removal. In accordance with the Judicial Committee Appellate Procedure Rules, the Chair notifies the appellant, the National Chair, and the National Secretary of the vote, preliminarily in person or by telephone, and thereafter in writing upon receiving signed verification of their votes from Judicial Committee members.⁴

We hope this opinion is responsive to your inquiry. Please do not hesitate to contact us to clarify it or with any questions or other matters concerning which we might be of service.

Very truly yours,

Henry M. Robert III, P.R.P.

Thomas J. Balch, P.R.P.

⁴ The rules provide that notice also be given to “any other person(s) directly affected by the ruling” but in the case of suspension/removal of an at-large member of the National Committee, no particular persons appear to fit this description.