

Libertarian National Judicial Committee

Petitioner: Caryn Ann Harlos

vs

Respondent: Libertarian National Committee

**Re: Motion Authorizing the LNC to Enter Into a Joint Fund-Raising Agreement
with the RFK, Jr. 2024 Campaign**

Amicus Curiae Brief in Support of Petitioner by

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Introduction and Disclaimer

The content of this *amicus curiae* will focus on some of the potential compliance problems the proposed joint fundraising committee (hereafter “JFC”) with the Robert F. Kennedy Jr. campaign (hereafter “RFK Campaign”) may pose for the national Libertarian Party (hereafter “Party”).

It is acknowledged by the author that there are also very important internal governance, strategic, and philosophical questions regarding the propriety of the Libertarian National Committee (hereafter “LNC”) entering into a JFC with a presidential candidate who is running against our own Party’s duly-nominated candidate for that very same office, however, the author will leave those concerns for others to explore. It should also be noted that nothing in this brief should be construed as unwelcoming of the LNC potentially working with Mr. Kennedy in other capacities, such as issue coalitions.

The sole matter the author asks the Judicial Committee to take under consideration in this particular brief is whether the JFC as contemplated and described by the LNC in its public-facing communications and records is compliant with FEC regulations and, if not (or even if likely not), the ramifications the Party may face as a result.

Under the Bylaws of the Libertarian Party, the LNC has a duty to ensure the following:

- That the Party is “functioning as a libertarian political entity separate and distinct from all other political parties or movements” – Article 2 (1); and
- That the “Treasurer ... shall perform all duties required of the office by applicable federal and state law.” – Article 6 (6)

Subjecting the Party to a high probability of compliance problems contravenes these imperatives. It places the Party under operational, financial, or even existential threat, violating Article 2 (1), as a sanctioned, bankrupted, or even liquidated organization cannot be said to properly ‘function.’ It further threatens to require the Treasurer --- as the Party’s Chief Financial Officer and therefore the principal Party officer (other than the Chair) with oversight of these matters --- to follow directives that are potentially against FEC regulations, thus arguably violating Article 6 (6).

This brief therefore supports the relief requested in the Harlos appeal, and asks the Judicial Committee to nullify the LNC’s JFC plan at minimum on the grounds of its potential compliance problems. Some of those potential problems are discussed in the following pages.

Let it be clear that the author is not a licensed attorney and nothing herein should in any way be construed as legal advice or legal opinion. These are instead issues and questions that the author --- as a lay (non-lawyer) Sustaining Party Member concerned about the stewardship of the organization --- believes need to be addressed by the Judicial Committee as it considers the Harlos appeal.

Matters for Consideration by the Judicial Committee

The Federal Election Commission (hereafter “FEC”) website contains a variety of information on the requirements that a JFC and its participants must follow. The LNC’s theory is that the JFC structure they plan to use somehow allows donors to legally “borrow our contribution limits” (a direct quote from the Chair describing this plan) ¹ in order to route more money to the RFK Campaign than they could otherwise do directly. The author asks the Judicial Committee to review the extant guidelines and information from the FEC in light of the LNC’s proposed plan and consider if said plan is in alignment with FEC requirements.

Excerpts from the FEC website are in *italics*, centered, in smaller font, and boxed to clearly offset them from the author’s own text. Reasonable care was undertaken to correctly copy the excerpts and format them accordingly, though no guarantees are made as to the accuracy thereof. Members of the Judicial Committee are encouraged to directly consult the FEC website and other similar sources for themselves. Footnote citations are provided throughout the brief.

According to the FEC:

All participants in a joint fundraising effort, including unregistered organizations, must:

...

Screen contributions to make sure they comply with the limits and prohibitions of the Federal Election Campaign Act (the Act);

²

It is further stipulated that:

The joint fundraising representative must collect information about contributors and forward it to the participating political committees, including:

- *For contributions exceeding \$50, the amount, date of receipt and the contributor’s name and address.*
- *For contributions exceeding \$200, the amount, date of receipt and the contributor’s name, address, occupation and employer.*

³

The Judicial Committee should note that these JFC record-keeping requirements seem to align with the standard contribution record-keeping requirements. ⁴

¹ “Executive Committee Meeting July 11, 2024” <https://www.youtube.com/watch?v=S7BoAvqKock>

² “Joint fundraising with other candidates and political committees” <https://www.fec.gov/help-candidates-and-committees/joint-fundraising-candidates-political-committees/>

³ “As a joint fundraising representative” <https://www.fec.gov/help-candidates-and-committees/candidate-taking-receipts/joint-fundraising-representative/>

⁴ “Recording receipts” <https://www.fec.gov/help-candidates-and-committees/keeping-records/recording-receipts/>

The FEC also states:

Participants may advance funds to the joint fundraising representative for start-up costs of the fundraiser. The amount advanced by a participant should be in proportion to the agreed upon allocation formula. Any amount advanced exceeding a participant's proportionate share is considered a contribution and must not exceed the amount the participant may contribute to the other participants. (However, an exception is made for funds transferred between party committees.)

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If the LNC's theory were true, why would the FEC be concerned about participants internal to the JFC itself exceeding allowable contribution limits to one another? What would an allowable contribution limit even mean in such a case?

Moving on, the FEC also says:

In addition to any fundraising or disclaimer notices required, participants or the joint fundraising committee must include a joint fundraising notice with every solicitation for contributions. The notice must contain the following information:

...

A statement that the allocation formula may change if any contributor makes a contribution which would exceed the amount they may lawfully give to any participant.

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Yet again, if the LNC's theory were true, what contribution limits to a specific participant in the JFC would apply that could change the allocation formula in such a way?

An example page says:

Solicitations must inform potential contributors that their contributions will be used in connection with federal elections or that they are subject to the limits and prohibitions of the Federal Election Campaign Act.

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And elsewhere we read:

The fundraising representative and participants must screen all contributions to make sure they are neither prohibited by the Act nor in excess of the Act's contribution limits. The maximum a contributor may give to a joint fundraiser is the total amount they may contribute to all participants without exceeding any limits (less any amounts that the contributor has otherwise contributed to any of the participants).

...

With regard to gross proceeds, the fundraising representative must collect the required recordkeeping information and later forward it to the participating political committees. The date of receipt is the date the joint fundraising representative receives the contribution.

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⁵ Ibid, "Joint fundraising with other candidates and political committees"

⁶ Ibid.

⁷ "Joint fundraiser disclaimer example" <https://www.fec.gov/help-candidates-and-committees/making-disbursements-political-party/party-fundraiser-joint-fundraiser-example/>

⁸ Ibid, "Joint fundraising with other candidates and political committees"

Individual contribution limits are currently listed by the FEC as \$3,300 to a candidate committee and \$41,300 to a national party committee.⁹

The author asks the Judicial Committee to consider this in light of the LNC's plan. Let's hypothetically assume that a JFC consisting of the RFK Campaign and the LNC did allow an individual to contribute up to \$44,600 (less any prior contributions made in the applicable cycle to either the RFK Campaign or the LNC directly). The LNC has apparently proposed a 90% / 10% split, respectively, between the RFK Campaign and itself. In this hypothetical scenario, if an individual donor were to max out a \$44,600 contribution to the JFC, the LNC apparently plans to retain \$4,460 and forward \$40,140 to the RFK Campaign.

If the LNC's plan were in alignment with FEC guidelines, what are we to make of the FEC's statement elsewhere that a JFC must provide:

A statement that the allocation formula may change if any contributor makes a contribution which would exceed the amount they may lawfully give to any participant.

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The FEC also says:

Generally, the fundraising representative must allocate gross proceeds according to the allocation formula. However, the formula may change if the allocation results in:

- An excessive contribution from a contributor to one of the participating committees;*

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What does the LNC believe would constitute an excessive contribution to a participant, if not the very same limits which apply to a direct contribution made to that participant? The FEC goes on:

Reallocation under these circumstances must be based on the other participants' proportionate shares under the allocation formula. If reallocation results in a contributor exceeding the contribution limits for the remaining participants, the fundraising representative must return the excess amount to the contributor.

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Again, if the LNC's theory were correct, in what scenario would the requirements to reallocate or return funds possibly apply?

On disbursements, the FEC says:

Using the records received from the joint fundraising representative, a participating committee also must itemize its share of gross receipts as contributions from the original donors on a memo entry Schedule A. When itemizing gross contributions, the participant must report the date of receipt as the day the joint fundraising representative received the contribution.

Example

Committees A, B and C are using an allocation formula of Committees A and B, 25 percent each; Committee C, 50 percent.

⁹ "Contribution limits" <https://www.fec.gov/help-candidates-and-committees/candidate-taking-receipts/contribution-limits/>

¹⁰ Ibid, "Joint fundraising with other candidates and political committees"

¹¹ Ibid.

¹² Ibid.

The participants receive a \$2,000 contribution from a donor who had previously contributed up to his limit to Committee C. If the joint fundraising representative were to divide the contribution according to the allocation formula, Committee C would receive an excessive contribution of \$1,000. Instead, the excess \$1,000 is divided equally between Committees A and B, since their proportionate shares under the allocation formula are equal. Each receives an extra \$500, bringing their total allocation to \$1,000 apiece. If, however, Committee A can accept only \$800 from the contributor without exceeding the limit, the excess \$200 is allocated to Committee B. If Committee B cannot accept the money for the same reason, the \$200 must be returned to the contributor.

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The Judicial Committee is asked to consider if this does not suggest that a JFC is financially intended as a sort of pass-through entity, and that net donations to the JFC must ultimately be itemized and reported exactly the same as if they were given directly to the participant committee?

The Judicial Committee is further asked to consider if this example provided by the FEC does not explicitly refute the LNC's theory, such that the JFC could forward to the RFK Campaign from any individual donor no more than the \$3,300 individual contribution limit to a federal candidate committee, regardless of the higher overall limit available to the JFC in the aggregate?

In such a scenario, would the LNC attempt to reallocate and keep any such surplus funds for the Party, likely drawing the understandable ire of, or potential legal action from, supporters of Mr. Kennedy who did not intend that outcome? Even if the JFC did technically comply with the fundraising notice requirement to provide donors with:

A statement that the allocation formula may change if any contributor makes a contribution which would exceed the amount they may lawfully give to any participant.

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... such a reallocation of the bulk of JFC funds to the Party that were intended by donors for the RFK Campaign is highly problematic on multiple fronts, and not at all congruent with the intent of the plan as the LNC has publicly presented it.

Or what happens if the LNC is later ordered or otherwise required to refund excess contributions to donors, but has already spent that money on bills due to its current financial condition?

It is doubtful if these or other similar questions have been asked by many on the LNC.

¹³ "Allocating gross joint fundraising proceeds" <https://www.fec.gov/help-candidates-and-committees/making-disbursements/allocating-gross-joint-fundraising-proceeds/>

¹⁴ Ibid, "Joint fundraising with other candidates and political committees"

Conclusion

There are likely a number of other compliance issues or questions that could be raised. As far as members know from what has been made public, it does not appear that the LNC has vetted this plan through an attorney specializing in federal election law, or by receiving an advisory opinion from the FEC. In fact, public communications on the matter make it seem highly-doubtful that many members of the LNC conducted any real due diligence on this matter at all.

If the LNC believes the Party is already in a poor financial condition, then it certainly is in no position to be testing novel theories regarding FEC requirements which very likely may result in needing to defend against an FEC action and/or pay potentially-steep fines.

It is incumbent on the Judicial Committee to protect the Party, and the interests of the membership, from this perilous course of action. **Therefore, on the grounds of these potential compliance issues (at minimum), the LNC's plan to enter into a JFC with the RFK Campaign should be immediately nullified.**