Libertarian National Judicial Committee

Petitioner: Caryn Ann Harlos

vs

Respondent: Libertarian National Committee

Re: Suspension of the LNC Secretary Caryn Ann Harlos

Amicus Curiae Brief in opposition of Petitioner and in Response to the Moulton Brief

by
Jonathan M. Jacobs,
Sustaining Member
November 23, 2024

Dr. Chuck Moulton submitted an amicus brief on the appeal of the removal of Caryn Ann Harlos as LNC Secretary to the Judicial Committee (JC) of the Libertarian Party. This will be general response to the issues raised. The amicus will also be responding, in first person, to some of Dr. Moulton's speculations.

One thing that will not be addressed beyond this point is Dr. Moulton's mea culpa for his role in the now nullified Harlos removal in 2021. His judgement that at trial was unnecessary was rightly voided by the 2022 Reno Convention. It should be noted, however, that what that convention determined was that to what Ms. Harlos was entitled was a right to be clearly informed of the charges against her, to have counsel, to have time to prepare a defense, to present evidence and witnesses, and to cross examine witnesses; in short, she was entitled to due process. This time, she got that. Ms. Harlos may not have gotten the result she wanted, but she got the right to due process that she had demanded and deserved.

Part 1 Cause, and Effect

The first point is what could constitute "cause."

Dr. Moulton has claimed that the Policy Manual 1.01.4 defines cause, stating: "No Party Officer or At-Large Member shall be subject to removal from office except for failure to perform the duties of office or gross malfeasance." Could this rule supersede the RONR (63:24) provision that says:

> "If such particular offenses are not defined or are not applicable, a member may be charged with "conduct tending to injure the good name of the organization, disturb its well-being, or hamper it in its work," or the like, and an officer may be charged with misconduct of the type just mentioned or with "misconduct in office," "neglect of duty in office," or "conduct that renders him [or "her"] unfit for office."

Possibly[1] it could.

Could that clause supersede Article 6.7 of the Bylaws, which is:

The National Committee may, for cause, suspend any officer by a vote of 2/3 of the entire National Committee, excepting the officer that is the subject of the vote who may not participate in that vote."

No, it could not.

The reason it could not is because of a bylaw interpretation rule in RONR (56:68) which states: "4) If the bylaws authorize certain things specifically, other things of the same class are thereby prohibited." This concept is even expressed in the legal maxim, expressio unius est exclusio alterius. By placing "cause" in the bylaws, the meaning may only be limited by those bylaws, not by a lesser rule.

To give an analogy here, the LNC can fill vacancies in office (Article 6.8). They must choose someone that is a sustaining member per Article 6.1. The LNC could **not** adopt a rule that said "Nonmembers shall be eligible to fill vacancies in office," obviously; such a rule could not be enforced and is void. Under the same principle the rule, "Only life members shall be eligible to fill vacancies in office," could not be adopted; it could not be enforced and is void. If the LNC, after adopting such a rule, elect a sustaining member, but not a life member, to fill a vacancy, that election could not be challenged in the future on the ground that it violated this void rule. This is likened to the violation of an unconstitutional law. Policy Manual 1.01.4, is void where it violates the Bylaws, and it violates the Bylaws where it attempts to limit "cause."

We do have a definition of "cause" based solely on the Bylaws, that was widely agreed to in 2021. That definition of cause was not, in any way, affected by the point of order at the 2022 convention. It was included in Ms. Harlos' case-in-chief in 2001, and written by the amicus, who was advising her at the time:

"Mr. [Dr. Chuck] Moulton asked for a definition of "cause" in removal. In writing this, I will try to delineate what constitutes "cause" from various issues.

"In his presentation, Mr. [Richard] Brown spoke to this [the LNC parliamentarian testifying in support of LNC action], citing RONR 61:3 which noted that, even if not included in the bylaws, a member may be "found guilty of conduct described, for example, 'tending to injure the good name of the organization, disturb its well-being, or hamper it in its works." Actions that fall under these broad categories would be considered "cause" under RONR. I agree with him on these points."[2]

The amicus does **not** change his opinion based on who his client is, or was. However, there is a third individual also shared this opinion, Chuck Moulton, then a Judicial Committee member who wrote the original judgement.

Several days ago, Dr. Moulton indicated, "Ultimately the JC settled on an implicit definition of cause in RONR, which was 'conduct injurious to the organization or its purposes.'"[3] All three individuals, the LNC parliamentarian, Dr. Moulton, and amicus, through Ms. Harlos' own filing; that is the effect of putting the unqualified requirement for "cause" in the bylaws. It can include "gross misconduct," but it is **not** limited to that. It does include the charge for which she was found guilty, i.e. "Conduct that disturbs the well-being of the Libertarian Party, hampers it in its work, and that renders Ms. Caryn Ann Harlos unfit for the office of Secretary."

<u>Part 2, Executive Session</u>

Dr. Moulton, "Here, in contrast, there are a multitude of due process violations. The starkest one in my opinion is the executive session for the trial.[3]" Dr. Moulton identifies no other problems regarding due process. Further, as executive session is not part of due process, he has not identified any problems.

Strictly under RONR, executive session, a session generally closed to nonmembers, may be held for any reason (9:24). It, absent a rule, is required for disciplinary action, but it not part of a due process requirement. RONR (6:3) notes:

"Neither the society nor any of its members has the right to make public the charge of which an officer or member has been found guilty, or to reveal any other details connected with the case. To make any of the facts public may constitute libel."

Executive session for disciplinary matters exists to protect the society and its members, not the accused.

RONR does define what due process rights are at 63:5, stating:

"If thus accused, he has the right to due process—that is, to be informed of the charge and given time to prepare his defense, to appear and defend himself, and to be fairly treated."

At no point is the accused member said to have a due process right to have the trial in open session or in closed session. The bylaws do not establish a process for a trial, leaving the form of the process to RONR and the Policy Manual. Executive session is not part of due process.

The Bylaws, Article 7.15, place restrictions on the purposes for holding executive sessions. Several could be applicable, but one definitely is. Ms. Harlos, while an officer of the LNC, is under some definitions "personnel." Likewise, during the trial, there were references to the conduct of a contractor, who was present. It is not that clause, however, that would be operable here. It is the "pending or potential litigation" clause that permits these executive sessions.

As previously cited, RONR (63:3) notes that, "To make any of the facts public may constitute libel." Libel is a legal action, potential litigation. However, it is broader than that. In writing on disciplinary actions, more than a decade ago, the amicus said, "Second, it does illustrate a statement the author makes to any of his clients entering into disciplinary action, 'Even if you do everything right, you still have about a fifty percent chance of being sued.'" [4] These types of cases are prone to litigation due to their nature.

There is however a third source, Caryn Ann Harlos. Ms. Harlos, referring to the Investigatory Committee report said, in a 10/8/24 e-mail to the Chair:

"I already stated I do not consent. **I am libeled in it as is my husband and others**. I do NOT consent to making ANY portion of it public." [bolding added][5]

This is an admission by the accused, who Dr. Moulton represents, that this is potential litigation. It cannot be realistically claimed that a report is subject to litigation while a trial based on that report, is not.

There is no rule against hypocrisy in RONR. That is a circumstance for which Ms. Harlos and her counsel should be grateful.

A final point is the rule that the purpose for an executive session must be announced, specifically, "The motion to enter Executive Session must list all reasons for doing so from among the following… ." This, the composition of a motion, is clearly a rule in the nature of a rule of order, as it relates "to the orderly transaction of business in meetings and to the duties of officers in that connection (RONR, 2:14); it could have been suspended (2:22). A timely point of order would have been needed to object (23:5).[6] Likewise, the rule against recording an executive session can be suspended (2:23).

On the Verge of a Purge?

In this section, third person will be abandoned.

Dr. Moulton claimed, "Credible rumors suggest after removing Caryn Ann, they will next remove treasurer Bill Redpath and then vice-chair Mark Rutherford (p. 6)." Those rumors are not credible. How do I know this? Because I am the guy who is about 90% likely to get the call.

I have done parliamentary work for certain caucus for several years, you know, the caucus that has the majority on the LNC and the one of which Mr. Redpath and Mr. Rutherford are not members. Disciplinary actions involve procedure; most parliamentarians don't do it. Even if I did not have an association with this caucus, I would still have a good chance of being called. I have not gotten the call. No emails, no private messages, no letters, and I do not text. No subtle hints. No oblique questions. Nothing.

Bluntly, that could change five minutes after I submit this. What would I say if I would get that call?

I would say that under RONR, disciplinary action is "mind numbing and soul crushing," and I would tell them "to think long and hard before doing so." Notice the quotes. They are from an article I wrote last March, that was published in mid November[7]. My latest experience, one of many over a career, has not changed my assessment.

You don't have to take my word for it. Talk to the people that were on the Investigatory Committee or talk to some affiliate where disciplinary action has happened. They will tell you the same thing. I know, because they are telling me the same thing. Well, they usually say it ended up being worse than I described it.

It is not impossible that either man will face disciplinary action, but it is very unlikely and would have to be for a very good cause. I hope that Mr. Rutherford, Mr. Redpath, and the other officers and at large members of the LNC will never make it necessary.

End Notes

[1]RONR (12th ed.) provides that some rules must be placed in the bylaws to be effective (2:16 n5). RONR also, since the 11th edition (2011), said that the assembly may schedule a special meeting to deal with disciplinary action (63:21) and along with the misconduct clause of 63:24. These rules *may* in fact be a type of rule that could only be overridden by a bylaw. The text, however, does not clearly state that.

[2] Jacobs, Jonathan M. Memorandum on Cause, 10/21/21 https://lpedia.org/w/images/e/ec/Memo_2_on_cause_by_JJ.pdf

[3] Mouton Amicus, https://lpedia.org/w/images/2/20/Moulton_amicus_harlos_2024.pdf

[4] Jacobs, Jonathan M., "Procedural Aspects of the Penn State Scandal," *Parliamentary Journal*, Vol. LV, No 4, 138 (October 2014) Digital text version: https://www.academia.edu/26614831/Procedural_Aspects_of_the_Penn_State_Scandal

[5] E-mail from Harlos to McArdle of 10/8/24, 2:16 PM (see Appendix)

[6] Jacobs, Jonathan M. "Timeliness versus Suspension of the Rules by Implication."

Parliamentary Journal, Vol. XLVIII, No 1, 18 (January2007) Digital text version: https://www.academia.edu/26615965/Timeliness_and_Suspension_of_the_Rules_By_Implication_pdf

[7] Jacobs, Jonathan M. "Punishments," *National Parliamentarian*, Vol. 86, No. 1, 6 (Fall 2024) https://issuu.com/parliamentarians/docs/nap_np86-1-wwwfinal

Appendix

Angela McArdle
Chair, Libertarian National Committee

From: Caryn Ann Harlos <carynannharlos@gmail.com>
Sent: Tuesday, October 8, 2024 2:16 PM
To: Angela McArdle <angela.mcardle@lp.org>
Cc: Oliver Hall <oliverbhall@gmail.com>
Subject: Re: Report Confidentiality

I already stated I do not consent. I am libeled in it as is my husband and others. I do NOT consent to making ANY portion of it public. I was not questioned on multiple things, there are lies, it is written in completely biased voiced and inappropriate. If this confidential report is made public, I will pursue any legal remedy I have against the libel. You already sent to unauthorized third parties who may not have read exposing the party to legal liability.

In Liberty,
Caryn Ann

On Tue, Oct 8, 2024 at 12:19 PM Angela McArdle <angela.mcardle@lp.org> wrote:

> Ms. Harlos:
>
> We have not made the report public yet. Please let us know if or when you are agreeable to making it public, or if it should be partially redacted.
>
> **Angela McArdle**
> Chair, Libertarian National Committee