The following respondents file this answer to appellants' 05/11/19 complaint to the Judicial Committee of the Libertarian Party of California (LPCA):

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References to RONR found herein refer to Robert's Rules of Order Newly Revised, 11th edition.

Introduction

The issue in this appeal is the deletion of the Platform of the Libertarian Party of California, at the Convention in Concord, California, April 7, 2019.

Appellants ask you to "declare the entire platform voting portion of the 2019 convention null and void, leaving the convention delegates free to re-consider the issue cleanly at the 2020 convention if they so desire." This is not a trivial request, asking you to reverse the votes of the convention delegates. This puts the Judicial Committee (JC) in the position of potentially imposing a platform which did not have majority support.

This response addresses appellants' issues section by section below. Respondents urge the JC members to review referenced video segments and RONR passages for themselves, rather than accepting on face value the portrayals in the appellants' complaint or even in this response. We believe that several situations are substantially mischaracterized in the appellants' complaint. Even the evidence appellants present as being supportive of their case in numerous instances disproves their own arguments.

The bylaws do not specify which party has the burden of proof, leaving respondents feeling a need to be as complete as possible in addressing many un-evidenced and manipulative allegations.

Role of the Judicial Committee / Standard of Review

Under LPCA Bylaw 14, Section 3 (emphasis added): "*The Judicial Committee review of a Party action or inaction* ***shall be limited to the consistency of that action or inaction in accordance with the governing documents of the Party, including these Bylaws and documents to which they refer****, with the only exceptions being Judicial Committee duties mandated by these Bylaws, and arbitration of Party contracts that explicitly call for arbitration by the Judicial Committee"*

It is the role of our convention delegates to make political decisions. The JC must not allow itself to become a political body, because it was designed to only apply the rules adopted by the delegates.

Under Bylaw 28, the "documents to which they refer" include Robert's Rules of Order Newly Revised (RONR), so the JC must consider limitations placed by RONR.

Under RONR, there are a limited number of things that can cause an action to be null and void after the fact:

- RONR p. 250–251 —Points of order must generally be raised in a timely manner at the time the breach occurs, and afterwards it is too late to do so. Specified exceptions to the general rule are itemized, and for errors within the exception categories "it is never too late to raise a point of order since any action so taken is null and void." (more detail on exceptions below)
- RONR p. 347, lines 22–24 —Lack of quorum (more detail in a later section)
- RONR p. 3 line 32–p. 4 line 2 —Violating procedural rules prescribed by local, state, or national law
- RONR p. 343 line 14–p. 344 line 5 —Improper motions as described, but none of the listed categories are applicable to this appeal
- RONR p. 416 —Votes taken when ballots were cast by persons not eligible when those ineligible votes could have affected the outcome
- RONR p. 483 —Actions of a board which alter or conflict with decisions made by the assembly

Parliamentary procedure related appeals to the JC essentially raise points of order after the conclusion of a meeting, invoking the questions of timeliness of points of order, and the exceptions to the timeliness requirements. RONR reserves the "null and void" remedies proposed by appellants for only the most serious procedural flaws. If actions could be reversed after-the-fact for minor procedural flaws (such as a chair forgetting to give first preference in recognition to the mover of a motion), organizations could be in perpetual turmoil arguing over past procedural errors and never make forward progress on the organization's goals.

Please note that RONR p. 251 provides that:

> "The only exceptions to the rule that a point of order must be made at the time of the breach arise in connection with breaches that are of a continuing nature, in which case a point of order can be made at any time during the continuance of the breach. Instances of this kind occur when:
>
> a) a main motion has been adopted that conflicts with the bylaws (or constitution) of the organization or assembly,*
> b) a main motion has been adopted that conflicts with a main motion previously adopted and still in force, unless the subsequently adopted motion was adopted by the vote required to rescind or amend the previously adopted motion,
> c) any action has been taken in violation of applicable procedural rules prescribed by federal, state, or local law,
> d) any action has been taken in violation of a fundamental principle of parliamentary law (p. 263), or
> e) any action has been taken in violation of a rule protecting absentees, a rule in the bylaws requiring a vote to be taken by ballot, or a rule protecting a basic right of an individual member (pp. 263–64).
>
> In all such cases, it is never too late to raise a point of order since any action so taken is null and void. […]

> * Unless the conflict is with a rule in the nature of a rule of order as described on page 17, lines 22–25, in which case a point of order must be timely."

Please note that in sections (d) and (e) above, page references are given to find listings of the types of things which fall into that category. You can see that those subjects are not at issue here.

In this case, appellants need to demonstrate that their complaints fall into category (a) above to justify granting the requested action. Please note that only a violation of the **bylaws**, not a violation of the Convention Rules or of the rules of order in RONR, qualify for category (a) above. This is plain enough from the wording of (a), but to further emphasize the point, note the asterisked footnote that points of order about a "rule of order" must be timely, that is, raised at the time of the breach rather than after-the-fact.

RONR p. 12-16 addresses distinctions between "bylaws" and "rules of order" in detail. Bylaws are things that cannot be suspended on the fly. Rules of order include both RONR as the parliamentary authority and any "special rules of order" (such as the LPCA Convention Rules) adopted to override selected portions of RONR. Note specifically on p. 15 in the description of "rules of order":

> "Such rules relate to the orderly transaction of business in meetings and to the duties of officers in that connection. The object of rules of order is to facilitate the smooth functioning of the assembly and to provide a firm basis for resolving questions of procedure that may arise. In contrast to bylaws, rules of order derive their proper substance largely from the general nature of the parliamentary process rather than from the circumstances of a particular assembly."

Bylaws are about defining the organizational structure. Rules of order are about the process by which business meetings are conducted.

This responsive brief will demonstrate there are no qualifying bases upon which the JC ought to overturn a vote of the 2019 LPCA convention delegates during the report of the Platform Committee.

Re: Appellants' "Background"

In the opening paragraph of this section, appellants suggest that the JC is to use as its standard whether the challenged actions "are of such a nature to go against the very principles of the party and its governance structure." That is not the standard for the JC's decisions. We again refer to Bylaw 14.3, setting the standard as compliance with the governing documents.

The governing documents are well-defined. Vague and subjective references to the "principles of the party"—which in the next paragraph they explain are not even limited to an adopted Statement of Principles, but to the appellants' own definition of the "spirit behind them"—are much more subjective and go well beyond the adopted rules which are the JC's standard. The consequences of taking such an approach is that it converts the JC into just another political body with the power to substitute its own political opinion for that of the convention delegates.

The reason that RONR comprises 700-ish pages of rules is to provide rules derived by neutral, unbiased organizational experts. RONR itself explains that those very rules are derived from concerns for fairness and protection of rights of competing interests. Appellants ask you to set your own standards of fairness, and essentially ignore the rules agreed to by our convention delegates, abdicate your duty, and instead legislate from the bench.

In the paragraph titled "Governance Structure" appellants reference essentially a preface-type section of RONR, titled "Principles Underlying Parliamentary Law" (see page li), and suggest that you may take any action for "protection of a strong minority (i.e. more than one-third)." This preface-type material is not a green light for the JC to self-determine how to apply the idea. Note that same page says, "The means of protecting all of these rights in appropriate measure forms much of the substance of parliamentary law, and the need for this protection dictates the degree of development that the subject has undergone."

When you read the context, the point is that the actual rules spelled out on the numbered pages of RONR have already been derived from these principles, thus the application of the actual rules is the means by which you do justice to the various groups including strong minorities. The main way that RONR protects the strong minority of more than one-third is by establishing specific rules that certain actions require a 2/3 vote rather than a majority vote. Thus, some noted minority rights in voluntary associations operating under RONR are not absolute, but are only "to the extent that can be tolerated in the interests of the entire body."

Re: Appellants' "Mass Deletion/Mass Adoption of Platform Planks"

Convention Rule 8

Convention Rule 8 begins, "*The Chair of the Platform Committee shall report the Committee's recommendations to the floor, plank by plank. The delegates shall vote on each recommendation separately.*"

Reasonable people can disagree about what exactly this rule requires. It uses different language for how the recommendations are "reported" (plank by plank) versus how they are voted on. This rule does not require plank by plank voting. The Platform Committee Chair followed the most obvious interpretation of Rule 8, which requires delegates to "vote on each recommendation separately". The Platform Committee Chair followed the requirement by explaining 2 recommendations: first a recommendation to delete, and second a recommendation to adopt the National Platform. Separate votes were taken on the separate recommendations.

During debate of this motion, no delegate argued that Convention Rule 8 prohibited proceeding in this manner. If there is a disagreement in the application of the rules, a point of order should have been raised at the time, and the delegates are the appropriate body to interpret their own rule on the spot, because RONR does not allow "rule of order" objections to be raised after-the-fact.

Rather than making this document even longer with expansive arguments about what the rule requires, respondents will simply note that such arguments ultimately do not matter to the

question of whether an alleged violation of Convention Rule 8 provides a basis for the JC to overturn the delegates' decision to delete the platform. It does not.

Violations of **bylaws** fall into the already-discussed category of things that make actions null and void, even if no point of order were raised at the time of the breach. Convention Rule 8 is not a bylaw. However, if the JC believes that this rule was violated, our parliamentary authority requires that points of order about lower-ranking rules of order must be raised at the time of the breach, and no one did so.

Appellants claim that at timestamp 02:30:40, "a delegate referenced 'our procedure' as consideration by plank and asked that this course be followed." Appellants have pulled two words out of their context and purported them to be a reference to Rule 8. The delegate said nothing about requiring separate motions for each plank. A review of the video reveals that the delegate said:

> "I've also been a chair of a Platform Committee, and I can say that the discussions in our committee were competitive, but healthy. And I think the discussions of the planks were healthy. I'm against top-down. I'm against centralized management. Here we complain about Washington, and now we're gonna let centralization be on our platform. It's just not the way to do it. I know some people don't like some things in the platform, and this is a cheap, easy way to get rid of those things. I don't think we should take the easy way. I think we should do it the way our procedures have it. Hash it out. We have time between now and the next convention. Let's—if our platform needs fixing up, let's fix it. I volunteer to be on the committee next time."

On the whole, this delegate seems to be advocating to retain the existing platform and "fix it" by proposing amendments next year, rather than deleting it this year. It is not reasonable to consider that comment as a whole and portray it as the delegate making a point of order about Convention Rule 8. This delegate has served on the LPCA Executive Committee and is familiar with how to raise a point of order if he had wished to. He did not act as though he had made a motion or raised a point of order. He advocated for a negative vote and then left the microphone at the end of his debate comments.

Appellants also mischaracterize the comments made at the 02:37:35 timestamp, though those comments were made by one of the appellants. The delegate actually said:

> "Also, historically, the California Libertarian Party has never taken a position on the death penalty because we've never achieved the 2/3 vote. The national party, in fact, has taken a position against the death penalty. I happen to be against the death penalty, but if you jettison this, then you're, by default, assuming that the national – that our party endorses the death penalty – endorses the absence of, the abolishment of the death penalty. So, again, I think this is very divisive. You can see by the comments pro and con, it's very divisive."

Appellants pretend that these debate comments about the alleged divisive effect of approving the motion are instead a rules argument, portraying them as "implicitly arguing the impropriety of considerations en masse." That's quite a stretch from the words actually spoken by the delegate.

Again, no delegate raised a point of order regarding Rule 8 at the time, and even if the JC believes that Rule 8 was violated by the motion to delete, it does not constitute a bylaw violation such that RONR would render the action null and void.

Consideration by Paragraph or Seriatim

Appellants cite RONR p. 277, line 34 – p. 278, line 1 from the section on "Consideration by Paragraph":

> "In adopting a set of bylaws or the articles of a platform, consideration by paragraph is the normal and advisable procedure, followed as a matter of course unless the assembly votes to do otherwise…"

First we note that this passage is about "adopting" text, but the motion to which appellants insist it should have been applied was a motion to delete text.

Appellants would have you interpret this language as saying it is mandatory. Reading further into the very next sentence, you will find that it continues to paint a different picture:

> "The chair, on his own initiative, **can** apply this method to any elaborate proposition susceptible to such treatment, **unless he thinks the assembly wishes to act on the question as a whole**; or the manner of consideration can be settled by unanimous consent. Should the chair neglect this, a member can move "that the resolution be considered by paragraph" (or "seriatim")."

Note that in this part of the passage, it says the chair "can" (which implies it is an option), and then excepts a situation in which the chair thinks the assembly wishes to act on the question as a whole. Clearly the Platform Committee wished to take it up as a whole.

The passage then goes on to discuss the converse situation in which (again using language implying options rather than mandates):

> "If the chair **suggests** consideration by paragraph and a member feels that time could be saved by acting on it as a whole, the member can move 'that it be considered as a whole.'"

The full context of the passage makes it clear that the chair has the option to choose a starting point, either consideration as a whole or by paragraph, and then the body can vote to do it differently if they so wish. If the chair starts with consideration as a whole, a delegate can move to consider by paragraph (RONR p. 278, lines 6-7). If the chair starts with consideration by paragraph, a delegate can move to consider as a whole (RONR p. 278, lines 9-12).

In the situation at issue here, the chair chose to start with consideration as a whole, which is how the Platform Committee desired to proceed. A delegate could have moved to consider by paragraph, but none did so at all during the motion to delete platform text. There were two motions to extend time for additional debate, but both failed. During the next motion to adopt different platform text, no delegate did so until after the time for debate had expired and the assembly was ready to take a vote. Please note the following timestamps:

> 02:58:08 – During consideration of the motion to adopt the text of the national platform, a delegate called for the previous question, and it was adopted, ending the time for debate.
>
> 03:09:50 – Following a recess and various other inquiries, the chair indicated she would conduct a counted rising vote and asked the yes votes to stand. Delegates were standing to cast their votes.
>
> 03:10:20 – A delegate then raised a point of order asserting that consideration by paragraph was required, but the chair found it was not a required process. The delegate then moved to consider by paragraph (a style of debate), but the chair ruled it to be too late to do that once the allotted time for debate has ended and the assembly was voting.

Even if a delegate had at an appropriate time moved to consider by paragraph, what would the process have been? Each plank would have been opened for separate debate, but not for individual votes on each plank.

The full procedure for considering by paragraph is spelled out on p. 278, line 16–p. 279, line 3. Each section is debated separately. During those separate debate periods, "Amendments are voted on as they arise, but no paragraph as amended is acted upon (as to final adoption or rejection) at that time. After all parts have been considered, the chair opens the entire document to amendment." Following all of that, the final step of the process is, "**Then the entire document is acted upon in a single vote.**"

Even if the chair had opted to start by considering by paragraph, the end result would have been a single vote on the whole. Considering by paragraph (seriatim) is about how the main motion is debated, and once the debate period has ended, that issue is no longer relevant.

Regarding the point of order at 03:10:20, appellants claim, "There was never a proper ruling on this point of order so there was no opportunity for appeal, and this point of order was miscast by the parliamentarian as a point of parliamentary inquiry on a theoretical situation contrary to fact…" Whether or not the chair prefaced her statements with the phrase "I rule that…," she had very clearly explained her disagreement that consideration by paragraph was required, so it is unfair to say there was never a proper ruling on the point of order. The discussion was even more confusing because the delegate at various times called it a point of order and at other times a motion to consider by paragraph.

A "point of order" raised to argue that the convention had mishandled something that didn't actually happen (no one made a motion to consider by paragraph during the proper time) is

reasonably instead described as a parliamentary inquiry about a hypothetical. If it were just a continued insistence that consideration by paragraph was required, though the chair had already ruled it was not, the point of order was not timely raised during the debate period, and the delegate did not attempt to appeal from the ruling of the chair.

Appellants claim, "The whole process was turned on its head, and the member raising the point of order requested independent parliamentary assistance and was denied." No one prevented this delegate from speaking with someone else to ask for advice. The video shows the delegate repeatedly and freely consulting with the author of the appellants' complaint. Instead, the delegate was requesting time for the complaint author (who was not a delegate, thus not entitled to speak by right, see RONR p. 263 footnote indicating it requires a suspension of the rules) to address the delegates after debate had ended and during the middle of conducting a vote.

RONR p. 408, lines 9-13, "Interruptions during the taking of a vote are permitted only before any member has actually voted, unless, as sometimes occurs in ballot voting, other business is being transacted during voting or tabulating." Delegates were already standing to cast their votes during this entire prolonged exchange.

To summarize, RONR does not mandate consideration by paragraph. Thus, no rule was violated. Even if the JC believes a rule of order was violated, it is not a bylaw and it provides no grounds to render the delegates' vote null and void.

Re: Appellants' "Point of Inquiry Incorrectly Answered"

Incorrect Basis for Overturning a Vote

Appellants do not provide any rules citation that the remedy they request is justified for such a complaint. For the sake of argument, if one accepts that the appellants are correct in this section that a point of information was incorrectly answered during a later motion, it is not a valid basis on which to overturn a motion the delegates had already adopted. Whatever a person imagines the delegates might possibly have done differently had an inquiry been answered differently, that provides no basis for overturning a convention vote. The word "prejudice" put forth by appellants does not even occur anywhere within the text of RONR, nor is there such a concept under different terminology that a misunderstanding in one area invalidates action in another. Again, only particular types of serious violations provide grounds for making a prior vote null and void.

No delegate actually made a motion to reconsider. If someone had done so, and it had been improperly ruled as out of order, the delegates could have appealed and decided the question. None of that ever happened. No rights were violated by the chair's attempt to answer a confusing point of information.

What Actually Happened

We believe the chair answered the question correctly, but the question itself was different than the one implied by the appellants. The appellants' brief portrays an oversimplification of the

words spoken by the delegate, and the rest of the verbiage helps explain the chair's response. This event happened after the motion to delete the existing platform had been adopted, and in the context of debate of the motion to adopt the text of the national platform to be the LPCA platform.

The appellants describe the question as, "if the assembly failed to adopt a new platform whether a motion to reconsider would be in order." Actually, the delegate further conditioned his question in a more complex way. The delegate's question is better summarized as: by just the nature of the Platform Committee report stating its intention to do this in two parts, was that enough to require reconsideration of the first motion. The chair's answer was specific to that question, not the generic question of whether a person who had voted "yes" had the option to make a motion to reconsider.

People often speak imprecisely about parliamentary language, and when an inquiry is made that does not logically connect, the chair may understandably think the speaker meant to use different vocabulary. In reality, whether a motion to reconsider would be in order has nothing to do with the Platform Committee's assurances that recommendation A would be followed by recommendation B, though the question seemed to assume that it is related. It is not unreasonable for the chair to think that the delegate's question was not really about whether a reconsider motion COULD be made, but instead was about whether motion B's failure would REQUIRE reconsidering motion A. The answer to that question is, "No," which is what the chair said. Just because the Platform Committee's collective goal was to adopt both A and B, the delegates have a right to adopt one but not the other.

This understanding of the question is further bolstered by the larger context. Note particularly the conversation between the chair and the previous speaker (see timestamp 03:07:45):

> Delegate 1: "I want to know the motion that we actually voted on, 'cause as it was written in the platform report it had a part that it says, 'It must be understood that this vote is warranted only in anticipation of the next stage.' I think some people might have thought that that meant that if the next stage failed, the first vote failed as well. Is that not what we voted on?"
>
> Chair: "The motion that he made was that we adopt the text of the National Platform. There was no other provision. He didn't present that that was…"
>
> Delegate 1: "Not the current motion, the previous motion – the previous motion when we deleted it. So the motion when we deleted it, in the platform report, the way that they worded it, it says, 'A vote by simple majority to remove the text of the current platform. It must be understood that this vote is warranted only in anticipation of the next stage.'"
>
> Chair: "It's in anticipation. It doesn't say that it makes it null and void."

The question from Delegate 1 was whether the failure of a motion to adopt replacement text would automatically invalidate the already-adopted motion to delete. Then the question from Delegate 2 seems to be a derivative: Even if it doesn't automatically invalidate the already-

adopted motion, does it require revisiting it as a motion to reconsider? Note the exchange immediately following at timestamp 03:08:44.

> Delegate 2: "Would, given what the gentleman just observed, the language that this second stage, or excuse me, that the first vote would only be warranted in anticipation of the second stage passing, and if the second stage doesn't have the votes to pass, would a move to reconsider the first vote be in order?"
>
> […the chair responds and again explains there was no proviso as part of the motion which would undo the first vote if the second vote failed…]
>
> Chair: "That was in his report, but when he actually made the motion which I repeated back several times, on all of the different votes, the way it was read back was this is to delete the entire platform. There was no provision after that. I mean you're welcome to, you know, appeal my ruling but that is what the motion was that was -- as stated."

To further confirm that no such proviso existed to automatically undo the first vote in the event the second vote failed, note the discussion from the motion to delete. At timestamp 02:19:55 immediately after the motion was made to delete, upon inquiry from a delegate, the chair confirmed that it was possible that the result would be no platform text. Later at timestamp 02:27:35 one of the appellants during debate pointed out to the delegates that that if the platform were deleted, there was no guarantee that 2/3 would agree to adopt replacement text, so it could result in no platform. When the chair answered the question raised by appellants, she correctly informed the delegates that failure of the second motion did not require revisiting the first.

The appellants' brief even acknowledges that what they perceived to be the same question was later correctly answered, but then offers excuses that perhaps the delegates were too tired to listen to that correct answer after they had been allegedly prejudiced by the first one. That is a rather insulting way to portray our delegates, as easily misled and inattentive. It is interesting for the appellants to not allow a chair an option to be too tired to parse a confusing question and discern the delegate's alleged intent, but then to excuse the delegates from their responsibilities to parse the questions and answers by saying they were too tired. The later question was a different question about the more generic case, further supporting that the chair's first answer was due to the nuanced context and language of the first question. The chair deserves the benefit of the actual context surrounding the first question.

Overall, the appellants would have the JC think that unless all delegates had perfect knowledge of what options they had, that the votes on the clear language of the motions which were made can now be nullified. Or if the chair possibly misunderstood the nature of someone's question (though we don't think she did) and instead answered a different one. If that were true, because there is almost always someone in the room with incomplete knowledge, then no adopted motion could withstand those conditions, and all convention actions including officer elections should be overturned after each and every convention.

Again, the actual question was answered correctly, and RONR does not declare adopted motions to be null and void simply because afterwards someone's question was allegedly answered incorrectly.

Re: Appellants' "Voting Rights Violations"

Intention of a Member was Improperly Cast by Another Member

Appellants do not provide any rules citation that the remedy they requested is justified for such a complaint. Again for the sake of argument, if one accepts that the appellants are correct in this section that a delegate said something to disparage what was intended by another delegate, our rules (including RONR) do not establish that as a basis on which to overturn a vote of the delegates.

Delegates often think that what other delegates say about a motion is factually incorrect, or rude, or twists what they said earlier. Appellants would have you think that anything said during debate that they disagree with is unfairly "prejudicial" and our notoriously independent-thinking delegates are not sophisticated enough to decide on their own the merits of debate and of the motion itself. Debate is a standard and healthy part of the process, not a prohibited prejudicial activity.

Even so, the complaint mischaracterizes the actions of this delegate as being:

> "First, when division was called for, the intention of the member doing so was improperly cast by another member as saying 'he thinks you counted wrong' (see timestamp 2:45:00) though the member said no such thing..."

We note that the words of the delegate should not have been put in quotes here in the appellants' complaint, as they are not actually verbatim language used by the delegate, and they portray the comment as having been more personal than it was.

Under normal conditions for motions requiring a majority vote (described in RONR p. 45-47), the chair starts with a voice vote. If that's inconclusive, or if "division" is demanded, the next step is to conduct a "rising" vote in which the delegates stand to vote, but the vote **is not counted** (RONR p. 46 lines 14-16). Finally RONR p. 47 lines 4-5 say, "If a rising vote remains inconclusive, the chair or the assembly can order the vote to be counted." The chair can use judgment to choose which type of vote to use as a starting point. (See also RONR p. 281, lines 28-30.)

Knowing that the vote would likely be close and contentious, and as suggested by a delegate, the chair in this case opted to skip directly to the third option, the counted vote so as to get the most precise result. The video (beginning at 02:40:20) shows her taking great care to try to get the count correct. She asked the delegates to rise while she counted, and she announced her count as being 36-32. After this, one of the appellants (at 02:43:52) said, "Given the closeness of the vote, I ask for a counting vote." A counted vote had just been conducted. The only logical reason to ask for a counted vote when one had just been conducted is if one wishes to double-check the count.

The appellants' complaint continues with the sentence,

> "For example, a chair may call for a rising vote sua sponte after a show of hands (or voice vote) if she feels the vote is 'unrepresentative', i.e. members held back from voting or might not have properly considered their vote."

The appellants' complaint does not provide the JC with a RONR citation here, but merely puts one single word in quotation marks so as to imply that the entire sentence represents a concept from RONR, though perhaps not verbatim. Spanning RONR p. 281-282 is:

> "The chair has the responsibility of obtaining a correct expression of the will of the assembly. If he is uncertain of the result of a vote or if he feels that the vote is unrepresentative, the chair can of his own accord take the vote again by a rising vote."

The complaint added words to the end of the sentence about the motivation being that "members held back from voting or might not have properly considered their vote," but those are not actually words found in this passage in RONR. They are the appellants' words.

Regardless, this RONR passage about a request for "division" is describing why a chair might use an uncounted rising vote rather than a voice vote. In the situation in question, though, the chair had instead used a counted vote, not an uncounted "division" by rising vote. The chair had already taken action to maximize representation and accuracy by taking a rising vote and counting it.

The delegate specifically stated his rationale as being, "**Given the closeness of the vote**, I ask for a counting vote." This portion of the appellants' complaint is a misleading and vague reference to pretend that delegate's motivation was something other than what he clearly stated, and portraying the situation as a procedure other than the one actually used at that point during the convention.

The reference is used to imply that another delegate was committing some grave offense by stating the reality of the situation, that the only reason to ask for a counted vote immediately following a counted vote is to double-check the accuracy of the count.

If you review the video (02:45:00), you'll find that the conversation was:

CHAIR: Are there 10 people in this room that object to the chair's ruling and want division?
DELEGATE 1: What was the chair's ruling?
CHAIR: —that the vote passed, and division is saying that you're objecting to my ruling of the vote.
DELEGATE 2: It's objecting to your count.
CHAIR: —or my count of the vote
DELEGATE 2: —that you didn't count right
CHAIR: —that I didn't count right

The quote appellants attribute to "delegate 2" is "He thinks you counted wrong." This sounds much more personal than what "delegate 2" actually said as shown above. "Delegate 2" was

clearly speaking to the chair to help her choose clear vocabulary to explain to fellow delegates why a delegate wanted to repeat the count which had just been taken.

There seems to be no point to even including this paragraph in a section titled “voting rights violation” except to portray it as an allegedly derogatory comment. In reality it was an accurate assessment of what was being requested by another delegate, and even if it had been a decorum offense, RONR does not say such is a basis for overturning a vote.

Alleged Improper Instructions

The complaint alleges, “Beginning at 2:46:10, the chair informed the delegates that only the delegates that voted previously could participate and that everyone must vote the same way they previously voted. This is, however, incorrect and fatally so, though affirmed by the parliamentarian.”

Appellants do not provide any rules citation to demonstrate that this is “fatally” incorrect. They merely allege it.

Recall again that a counted vote had been conducted, and one of the appellants requested to do it again. RONR p. 411, under the heading, "METHOD OF COUNTING A RISING VOTE," says:

> "In all but small assemblies, the doors should be closed and no one should enter or leave the hall while a count is being taken."

RONR prescribes this to protect the integrity and accuracy of the count, so the count is performed with a fixed pool of the current participants. The initial count-off, and even more-so a repeat of the count-off, is not a time-buying chance to change the outcome of a vote by pulling in new voters from the hall. The re-count is to confirm the accuracy of the first count. If a pile of paper ballots had been cast, a re-count would not distribute new ballots to the delegates and ask them to vote again. It is instead an effort to double-check the count of the existing votes on the existing ballots.

At timestamp 02:46:20, a delegate specifically inquired about this instruction, “If you didn’t vote the first time, and you were out doing something else, you’re not eligible to vote right now. Is that correct?” The chair’s affirmative answer is aligned with the RONR p. 411 instruction to fix the pool of voters during a count, and she reiterated that the request was to re-count the same vote again.

The appellants’ complaint goes on to claim, “Precluding members from changing their vote on such a tight margin is a fatal error, and it is known to the authors that at least one member would have changed their vote from “aye” to “nay” because they did not want such a tight margin on a momentous vote that would cause bitterness in the body.” We note that this is hearsay. No rules citation is provided by the appellants to establish the “fatal error” nature of this allegation, perhaps because the actual related rule establishes a time limit which does not work in their favor. However, presuming that there is such a member, that person would have been eligible to

make a motion to reconsider when the chair invited one at timestamp 03:22:15 and explained who would be eligible to do so. No motion to reconsider was made.

RONR p. 408, lines 21-26 (emphasis added):

> "A member has a right to change his vote **up to the time the result is announced**; after that, he can make the change only by the unanimous consent of the assembly requested and granted, without debate, immediately following the chair's announcement of the result of the vote."

At this point of the proceedings, the chair had already conducted a counted rising vote and had announced the result (at 02:41:33) as, "It passes. The platform has been deleted. Okay, so now we can go on to the next portion of the Platform Committee Report." Upon inquiry, she announced her count as being 36–32. The demand for a re-count of the same vote came at 02:43:52, more than two minutes after the chair's announcement of the result of the vote, so the time for changing votes had already passed.

The directives that the re-count of the vote only include the same voters as the first time, and that everyone should vote the same way that they previously voted were proper.

However, the rule that requires unanimous consent to change a vote is difficult to enforce unless a paper ballot was used. In this case, there was no real barrier to a delegate disregarding the appropriate instructions and changing their vote anyway. **Regardless, the outcome of each of the two counts represented a majority vote, sufficient for the motion to pass.**

The fact that the second count found a result of 37–27 leads the appellants to complain, "Clearly votes were changed, and the disparity is not within the reasonable margin of error for a group of this size."

Within the same section of text, the appellants have simultaneously attributed the difference in the second count to changed votes, and also alleged it to be a counting error. The appellants can't have it both ways. They argue that the entire process was "fatally flawed" by instructions to not change votes (which they argue to be improper, but we argue to be proper). They simultaneously argue that the process was flawed because some allegedly did change their votes, though they argue that vote-changing was allowed. Again, under both counts, regardless of whether the difference in counts was due to error or due to changing votes, the motion received a majority vote.

Vote Threshold Required

In the final paragraph of this section, appellants assert:

> "Additionally, the majority vote threshold can reasonably be determined to be improper according to the obvious intent of bylaw 20 which provides that the substitution of a plank for another requires 'a two-thirds vote, but not less than a majority of all registered delegates.'"

Bylaw 20, Section 1 provides that:

> "The Platform may be amended by deletion, substitution, or addition of any plank at any Party convention. The delegates may, by majority vote, delete a plank. The delegates, by a two-thirds vote, but not less than a majority of all registered delegates, may add a new plank, or substitute a new plank for an old plank."

The appellants wish you to ignore the clear statement in the second sentence that deletion only requires a majority vote, and instead they argue that the "obvious intent" of sentence three is to partially preclude sentence two, though they are talking about different options. It seems silly to even have to write this argument.

The obvious intent of a rule saying only a majority vote is required to delete, is that planks which do not enjoy majority support do not remain in the platform. The majority vote requirement precludes a minority from holding the majority hostage to retain a platform they no longer support. Appellants would convolute the rule to try to do exactly that, have a minority control the majority.

The language of the motion stands for itself. The first motion from the Platform Committee was merely to delete text from the platform, and that motion contained no substitution language. The appellants wish to force a later motion to be merged with this motion so as to create a substitution scenario, though that is not how the motions were made. Delegates could have moved to combine the two motions into a single vote, which would have raised the threshold to two-thirds, but they did not do that.

If a delegate (or a committee) intends to move A, B, and C, the delegates may have other thoughts and could even vote to adjourn after motion A but before motions B and C. A mover's stated intent is never a guarantee that the delegates will agree to that path, nor should it be. The majority of the delegates are the deciders, not the Platform Committee which merely offers proposals.

RONR p. 588, line 25 – p. 589, line 3 provides that (emphasis added):

> "Each society decides for itself the meaning of its bylaws. When the meaning is clear, however, the society, even by a unanimous vote, cannot change that meaning except by amending its bylaws. An ambiguity must exist before there is any occasion for interpretation. If a bylaw is ambiguous, it must be interpreted, if possible, in harmony with the other bylaws. The interpretation should be in accordance with the intention of the society at the time the bylaw was adopted, as far as this can be determined. **Again, intent plays no role unless the meaning is unclear or uncertain**, but where an ambiguity exists, a majority vote is all that is required to decide the question. The ambiguous or doubtful expression should be amended as soon as practicable."

It is not proper to attempt to argue that the alleged "intent" of Bylaw 20.1, sentence three, overrides the clear statement of Bylaw 20.1, sentence two.

Re: Appellants' "Participation by Parliamentarian"

Once again, under the standard that this committee's scope, *"shall be limited to the consistency of that action or inaction in accordance with the governing documents of the Party, including these Bylaws and documents to which they refer*," the appellants' argument fails. The parliamentarian met the bylaw eligibility requirements and was credentialed as a delegate.

Bylaw provisions override conflicting portions of the parliamentary authority. LPCA Bylaw 19, Section 4 contains no exceptions for credentialed chairs and parliamentarians when it provides that, "**All delegates** in good standing shall be eligible to vote on all matters." The parliamentarian was a delegate in good standing, thus the bylaws say she was eligible to vote on all matters. Unlike the default provision in RONR, there is no distinction made here between ballot votes and any other type of vote. It would be a violation of the bylaws to deprive the parliamentarian of the right to vote. RONR p. 617, lines 2-5 establishes that, "When the report of the Credentials Committee is adopted, it is thereby ratified as the official roll of voting members of the convention—subject to changes through later reports." The parliamentarian was a voting member of the convention.

Membership brings with it certain rights. RONR p. 3, lines 1-9 (emphasis added):

> "A member of an assembly, in the parliamentary sense, as mentioned above, is a person entitled to full participation in its proceedings, that is, as explained in 3 and 4, the right to attend meetings, to make motions, to speak in debate, and to vote. **No member can be individually deprived of these basic rights of membership**—or of any basic rights concomitant to them, such as the right to make nominations or to give previous notice of a motion—**except through disciplinary proceedings**."

Even in a matter in which a member has a financial conflict of interest, RONR p. 407, lines 30-31 notes, "However, no member can be compelled to refrain from voting in such circumstances."

The appellants' complaint cites RONR p. 467, lines 8–12, "A member of an assembly who acts as its parliamentarian has the same duty as the presiding officer to maintain a position of impartiality, and therefore does not make motions, participate in debate, or vote on any question except in the case of a ballot vote." (Note, the appellants' brief mis-quotes one word in this passage, but the text quoted here corrects that.)

Since the parliamentarian has the same duty as the presiding officer to maintain a position of impartiality, what is the presiding officer's duty in this regard? See RONR p. 53–54:

> "If the presiding officer is a member of the assembly or voting body, he has the same voting right as any other member. Except in a small board or a committee, however—unless the vote is secret (that is, unless it is by ballot; 45)—the chair protects his impartial position by exercising his voting right only when his vote would affect the outcome, in which case he can either vote and thereby change the result, or he can abstain."

RONR says expressly that the chair has the same voting right as any other member. It recommends that (except in small boards/committees) the way the chair protects that impartial position is by exercising that right only in certain situations. Even so, one situation in which the right is exercised is when the assembly is the most divided and casts a tie vote, and the chair can then expose partiality by exercising the right to vote and breaking the tie even while still chairing the convention. The chair's duty to protect his impartial position is not absolute, and the parliamentarian is similarly situated.

In RONR, the chair and the parliamentarian are not said to have a duty not to vote. Their duty is the more general one of maintaining the perception that their duties are being performed impartially. This involves discretionary decisions. If they vote, it is not actually a parliamentary error, let alone a fatal one.

In a situation where time is short, and a minority of delegates are very upset about an outcome, humans are more likely to make emotional decisions rather than rational ones based on a reading of the rules. The parliamentarian did not wish to consume a lot of convention time to argue this point, and chose to just remove herself from the dispute by voluntarily declining to vote on any subsequent motions. During this appeal, however, the JC has more time to calmly consider and is limited to only applying the existing rules, particularly Bylaw 19.4.

No Basis to Overturn

Even if the JC believes that the parliamentarian was forbidden from voting in such a situation, that is not a basis on which to overturn the convention's vote to delete the platform since one vote would not have made a difference in whether or not the majority vote was achieved. See RONR p. 416 lines 27–33, that the result is only null and void if the vote of the ineligible person cannot be identified in the pile of votes and if it could have made a difference in the result. Neither of those conditions is true here.

In footnote iv, appellants suggest that there was additional "harm" in that some members might have looked to the parliamentarian's vote as a source of "authority" to guide their own votes. Again, members debating motions in an attempt to persuade each other before a vote is a normal part of the parliamentary process, not a prohibited prejudicial activity. Appellants cite no rule to demonstrate that this is either improper or a basis for overturning a vote.

Re: Appellants' "Improper Motion to Adjourn"

For this complaint, appellants have not even done the JC the favor of showing them the RONR rule which is being alleged to have been violated or provide evidence by referencing the timestamp at which it happened in the video.

The language chosen by appellants could be read to vaguely imply that the motion to adjourn was allowed to "interrupt a pending question." A review of the video demonstrates that was not the case.

> 03:19:30 – motion to adopt the text of the national platform failed with a counted rising vote, and a delegate immediately again raised a point of order about considering by paragraph, which had already been raised and ruled upon earlier (see 03:10:21)
>
> 03:23:01 – With no other motion pending, a delegate moved to adjourn.

Appellants assert outright that there were pending points of order at the time. The point of order had been asked and answered earlier in the proceedings and was not a different question than was raised before. The chair believed it had already been addressed. A delegate seemed to think it had not been adequately addressed, so the chair first asked the parliamentarian to repeat what had been stated earlier, and then the chair again ruled (see 03:24:35) that consideration by paragraph was not required. The delegate attempted to reiterate the same point a third time, but since it is dilatory to keep reiterating the same point of order, the chair therefore proceeded to handle the motion to adjourn, which failed. RONR p. 451 notes that one duty of a presiding officer is to, "To protect the assembly from obviously dilatory motions by refusing to recognize them."

> 03:27:09 —The chair inquired whether there was any debate. A delegate was recognized for debate. Knowing that there are tricky exceptions that impact when a motion to adjourn is debatable or not, the parliamentarian flipped to RONR's tinted pages 6–7 to confirm. The parliamentarian mistakenly pointed the chair to the line for "ordinary case in societies" (not debatable) rather than the next line which in the long list of applicable conditions is for "when the assembly will thereby be dissolved" (is debatable).
>
> 03:27:52 —The chair said "ordinary adjournment is not debatable, so therefore…" and proceeded to conduct the vote on the motion to adjourn, which failed. It is not clear whether any other delegates even wished to further debate the motion to adjourn.

RONR p. 233–234 discusses that the motion to adjourn is always a privileged motion except in certain itemized instances.

Appellants argue that "debate may have changed votes." Lest the point be missed, the motion to adjourn <u>failed</u> at that time. Are appellants suggesting that they would have accepted the result if the motion to adjourn had passed at that time? Had it been adopted at that time, the platform would have been left in the exact situation it is in now, and appellants would not have been any happier.

At the end of the convention, when a motion to adjourn (see 03:44:10) was actually adopted, the video shows delegates ready to go home, putting on jackets, and no one approaching a microphone to attempt to debate the motion, so it was not even necessary to determine whether debate was in order.

Even if a procedural error occurred while processing motion B (adjournment), it does not invalidate a previously adopted motion A (delete platform text). Again, see the earlier cited section on the timeliness requirements for points of order. This is not a bylaw violation such that

RONR says it makes that action null and void; even if it were, it could only invalidate the motion to adjourn, which means what, exactly?

Appellants would have you overturn actual votes on motions based on hypothetical projections that if something different had been said on a different motion, that the minority opinion would have instead become the majority opinion, and the delegates would have suddenly reversed course on their previous decisions. That is not a reasonable conclusion, much less a given. Nor is it grounds to overturn. This is a perfect example of why RONR provides that points of order about such procedures be timely raised at the time of the breach, because hypotheticals about what might have instead happened are not evidence of the will of the delegates.

Re: Appellants' "Quorum Issues"

A proven lack of quorum is one of the reasons that could make an action null and void after the fact.

RONR p. 347, lines 22-24:

> "In the absence of a quorum, any business transacted (except for the procedural actions noted in the next paragraph) is null and void."

RONR p. 349, lines 21-28:

> "Because of the difficulty likely to be encountered in determining exactly how long the meeting has been without a quorum in such cases, a point of order relating to the absence of a quorum is generally not permitted to affect prior action; but upon clear and convincing proof, such a point of order can be given effect retrospectively by a ruling of the presiding officer, subject to appeal."

Notice that in questions about quorum RONR does set a burden of proof: that it takes "clear and convincing proof" to give such a point of order retroactive effect. Appellants have provided no such proof.

What Was Quorum?

The appellants provide a link to video of the Sunday afternoon session of the convention.

The parliamentarian's notes indicate that at the call-to-order on Sunday morning, the secretary reported 132 credentialed delegates, resulting in a quorum of 67. Registration was not open at all times during the convention, but at only specified intervals of time before the call-to-order and during meeting breaks so as to allow more people to participate in the convention rather than manning registration tables. After the next interval during which registration was re-opened, the parliamentarian's notes indicate that the secretary reported 136 credentialed delegates, resulting in a quorum of 69.

Registration was again opened during lunch. The video provided starts at the post-lunch call-to-order, and at 00:16:00 it shows the secretary reporting 135 credentialed delegates with a quorum of 68. A delegate inquired how, since the convention rules establish that delegates register for the

day, the number of credentialed delegates had decreased by one from the earlier report of 136. The secretary indicated a departing delegate had crossed his name off the credentials list.

LPCA Convention Rule 2 Section 3 establishes, "Delegates shall register each day of the convention. Each day's quorum shall be a simple majority of those delegates registered for that day." Either a delegate is there for that day, or they are not. Following a discussion, the chair ruled that there were 136 delegates, establishing quorum as 69.

After that credentials report, registration was not opened again, so it is not possible that any additional delegates registered following that final report. Quorum could not have exceeded 69 later in the day.

Was Quorum Present at Various Times?

The first counted vote on the motion to delete the platform can be found from 02:40:00 to 02:41:55 on the video. The chair directed a counted rising vote and announced her count as being 36-32. A delegate not at a microphone can be heard yelling about quorum. At 02:42:35 the chair ruled that a quorum was present. At 02:43:10 a delegate at a microphone says "Call for quorum." The chair and parliamentarian have a discussion that quorum is 69, and the counted vote indicated that 36+32 = 68 delegates participated, and the chair had abstained, and Bob Weber indicated he had abstained, demonstrating that there were at least 70 delegates present. The chair ruled that a quorum was present. There were likely additional abstentions, but there was no need to inquire about other abstentions once a sufficient number had been documented to establish quorum was present.

About this occurrence, the appellants claim, "This challenge to quorum was done as a result of the counted vote, and if that count is correct, quorum was not present, and if that count is not correct because people left, changed their vote etc., the re-count was invalid and still in question."

They provide no mathematical explanation how "if that count is correct, quorum was not present," and they suggest "if" but provide no evidence to support that the count was not correct "because people left, changed their vote etc." Nor do they explain exactly what is meant by "the re-count was invalid and still in question." These are vague and confusing assertions without evidence or mathematical support.

Recall that appellants argued previously that votes were changed, also that delegates were allegedly deprived of the right to change their votes, and now they argue that the recount would have been invalidated by changed votes. They can't have the benefit of simultaneously arguing conflicting positions.

At 02:43:55 a delegate says, "Given the closeness of the vote, I ask for a counting vote." After a sufficient number of delegates objected to the chair's count, at 02:45:25 the second count of the same vote commenced. At 02:49:33 the result of second count was announced to be 37-27. That demonstrates at least 64 delegates voted, and the video shows at least 5 additional delegates who abstained on the vote (Mimi Robson, Bob Weber, Jose Casteñeda, Joe Bishop-Henchman, and a

male seated near the back a couple of rows in front of Mr. Bishop-Henchman). Not all portions of the room are visible on the video, and it is quite likely that there were additional abstentions over and above the demonstrated 69 delegates present.

Later, during a 5-minute recess from 02:59:15 to 03:05:00, some delegates who had been sitting in the front two rows (stage right) depart. When the meeting calls back to order, both the secretary and the parliamentarian counted and found at least 69 delegates present. Even later at 03:34:45, another delegate questioned whether quorum was present. The chair directed a formal count of the number of delegates present in the room and found a quorum to be present. This was even after several delegates in the front two rows had departed.

Footnote v in this section of the appellants' complaint alleges:

> "No verification was done regarding the correctness of the number of 69 as the quorum from earlier in the day but has been assumed herein to be correct. Conflicting statements on quorum were made (see timestamp 3:38:30 for example) so it is unclear whether 69 or 69+1 was the quorum."

As already noted, registration had not been opened again after the final credentials report, so it wasn't possible that the registration had increased from that time.

The complaint (in footnote v) misrepresents the nature of the discussion regarding 69 or 69+1 at timestamp 03:38:30. A review of that video segment makes it clear that 69 was accepted to be the quorum. The discussion was about whether the count of delegates physically present was either 69 or 69+1, not whether quorum was 69 or 69+1. The delegate count yielded 70, but it was noted that one of those counted (on video it appears to be Jill Pyeatt) was wearing the Saturday ribbon color, rather than the Sunday ribbon color. That delegate said she mistakenly wore the wrong ribbon, but had the Sunday ribbon, looked through her possessions and then held up the Sunday ribbon, which meant there were 70 delegates present. Ms. Pyeatt is a member of the JC and can attest to her own status to her fellow committee members.

<u>Chair and Parliamentarian Counted Towards Quorum</u>

Bylaw provisions override conflicting portions of the parliamentary authority (see LPCA Bylaw 28 and RONR p. 14 lines 17–22). LPCA Bylaw 19, Section 4 provides that, "All delegates in good standing shall be eligible to vote on all matters." This bylaw overrides the above-analyzed rules in RONR, specifying that ALL delegates are eligible to vote on ALL matters. It contains no exceptions for delegates serving in particular roles or for certain types of votes.

The chair and the parliamentarian were voting members of the convention, thus should be included in quorum counts.

The appellants' complaint alleges:

> "Further, the chair and the parliamentarian were counted in quorum yet they are not members present in order to determine quorum as those are defined as persons entitled to make motions, to speak in debate, and to vote (see RONR pages 3 and 345), which are not rights that those two individuals possessed. In the first vote, the number of votes

totaled 68 which is one less than quorum but since the chair did not vote, she was added to that total to barely make quorum at 69. Further, one member expressly abstained (no others claimed so) so that quorum was noted to have been exceeded by one with a total of 70. However, neither the chair nor the parliamentarian should have been counted, making the assembly at less than quorum at 68 (further see footnote 6)."

First, the fact that no other delegates spoke up to say they had abstained is not evidence that no others had abstained. The one delegate who so spoke may have done so (though he was not required to) because he is a member of the JC, and chatter in the room may have suggested the matter would be brought to the JC. Other delegates would not have had the same motivation to speak up to say they had abstained.

The bylaw quoted above controls in this area, but even without that bylaw, the larger picture of RONR is worth reviewing.

The appellants' own brief earlier cited RONR p. 467, lines 8–12, "A member of an assembly who acts as its parliamentarian has the same duty as the presiding officer to maintain a position of impartiality, and therefore does not make motions, participate in debate, or vote on any question **except in the case of a ballot vote**." The very passage cited by appellants acknowledges the right of the chair and parliamentarian to vote on ballot votes, disproving the complaint's assertion that voting is not a right those two individuals possessed.

The appellants' earlier citation of RONR p. 467 inherently acknowledges that the parliamentarian was a member of the convention assembly. Now in this portion of the complaint they argue the parliamentarian was not a member. They cannot simultaneously have it both ways.

Additionally, the complaint inaccurately represents the relationship between membership and voting rights by claiming, "they are not members present in order to determine quorum as those are defined as persons entitled to make motions, to speak in debate, and to vote (see RONR pages 3 and 345)." Again, their own citations disprove their own claim.

Bylaw 19, Section 3 establishes the eligibility to be a delegate, and when that eligibility has been verified by the Credentials Committee and approved by the convention (RONR p. 617, lines 2-5), each of those people becomes a "voting member of the convention." RONR p. 3 defines that membership and voting rights are co-existent traits, not that first one determines voting rights (based on some other criteria unstated by the appellants) and then membership derives from that.

Again, RONR p. 3:

> "A member of an assembly, in the parliamentary sense, as mentioned above, is a person entitled to full participation in its proceedings, that is, as explained in 3 and 4, the right to attend meetings, to make motions, to speak in debate, and to vote."

Again, RONR p. 53–54:

> "If the presiding officer is a member of the assembly or voting body, he has the same voting right as any other member."

Even if appellants were correct that the chair and parliamentarian were "not members present in order to determine quorum", then the number of registered delegates would have decreased from 136 to 134, resulting in a quorum decrease from 69 to 68. The quorum count had yielded 70 delegates present, and even if you subtracted these two questioned individuals, there would have instead been 68 present, meeting the lowered quorum.

Appellants have not met their burden to provide clear and convincing proof that quorum was not present.

Subsequent Voting on Adoption of the National Platform

The appellants' complaint continues:

> "Further the subsequent voting on the adoption of the national platform was illegitimate as there was not a sufficient number of delegates present to satisfy the requirement in Bylaw 20 as follows:
>
> > 'The delegates, by a two-thirds vote, but not less than a majority of all registered delegates, may add a new plank, or substitute a new plank for an old plank.'
>
> Although all votes on this failed, they should not have been allowed to begin with, and if so, it is highly likely that a member would have brought a proper motion to reconsider but was prejudiced by this delay and diversion."

The minimum threshold for adoption of the motion (to adopt the text of the national platform) was the same as quorum. As just demonstrated, quorum was present, therefore the premise of this allegation is baseless. Appellants even note that the vote failed to have 69 delegates vote in favor of the motion, so no motion which requires presence of a quorum was adopted in the alleged absence of a quorum.

If there were clear and convincing proof that there truly was no quorum at this time, only those motions adopted in absence of a quorum would be nullified, not motions adopted previously when more delegates had been present. Even if this motion had been declared to have passed in spite of not having received 69 votes in favor, the error on this motion would have no relevance to appellants' request that the JC overturn a previously adopted motion to delete the existing platform. Appellants provide no citation to a rule which says an alleged error on motion B (to adopt the text of the national platform) justifies reversal of earlier motion A (to delete the existing platform text).

Respondents can make no logical sense of the final sentence in the above-quoted passage from appellants' complaint. They argue that the votes "should not have been allowed to begin with, and if so, it is highly likely that…" Well the votes WERE allowed, yet no delegate did do what they allege to have been "highly likely" if it were allowed, which is to move to reconsider. At timestamp 03:22:15 the chair invited an eligible delegate to move to reconsider if one so desired, and no one did.

The end of that final quoted sentence seems to be an egregious attack on the motivations of delegates exercising their rights, describing a motion prepared in advance of the convention and recommended by the Platform Committee to adopt the text of the national platform (as well as a subsequent motion to instead adopt the text of the national statement of principles) as "delay and diversion" which allegedly "prejudiced" anyone's willingness to move to reconsider. Appellants complain that there is no adopted platform text, yet they simultaneously use negative descriptors about attempts to adopt platform text.

Delegates have RIGHTS to make motions to adopt platform text. There is no basis to conclude that these delegates were intentionally engaging in some sort of delay and diversion tactic, yet they are libeled by appellants for doing so. Rather their intentions were reflective of genuine desire to adopt platform language. Exercising one's rights is not a "prejudice" against others who could have but did not actually make a motion to reconsider. Again, making motions and engaging in debate is a standard and healthy part of the process, not a prohibited prejudicial activity.

Re: Appellants' "Ideological Agenda"

Again, the role of the JC as given in Bylaw 14.3, "shall be limited to the consistency of that action or inaction in accordance with the governing documents of the Party, including these Bylaws and documents to which they refer." The only basis on which to overturn a vote of convention delegates is if it violated particular types of rules in particular ways (as described at the start of this response). Appellants do not provide any bylaw or others rules citation that the remedy they request is justified for such a complaint. Appellants would have the JC use difference of opinion between various delegates and party caucuses about platform style as the basis of overturning a vote of convention delegates which did not violate the party bylaws.

This section of the appellants' complaint includes hearsay which impugns an unnamed Platform Committee member for allegedly having, "clearly stated that the ultimate reason for the deletion was the hardline stance taken by the platform which may hobble candidates who wish to take softer positions (i.e., advocate for the initiation of physical force)." That's a rather serious accusation to make without providing any evidence (like a timestamp), that the goal is allegedly for our candidates **to advocate for the initiation of physical force**. If appellants are referencing the comments made by a delegate at timestamp 02:31:14, that delegate says nothing remotely resembling the characterization in the appellants' complaint.

It would seem that the appeal inclusion of an accusation of ideological agenda speaks more to the appellants' own views than it does to the views of the supporters of the motion to delete.

Re: Appellants' "Lack of Transparency/Ambush"

Respondents can at least agree with the appellants that, "the bylaws do not require any previous notice of platform recommendations or amendments." If the bylaws do not require previous notice, there is no justification for the JC to overturn a vote of the convention delegates on this

basis. Yet the appellants wish for such a rule to exist, and they advocate for overturning a vote of convention delegates on the basis of a rule which does not exist.

Again, the role of the JC as given in Bylaw 14.3, "*shall be limited to the consistency of that action or inaction in accordance with the governing documents of the Party, including these Bylaws and documents to which they refer.*"

Appellants assert that it "would have been relatively simple to provide the same notice" as is required for bylaws proposals, but under our bylaws, it's not relatively simple; it's essentially impossible.

Bylaw 15.2 requires that the Bylaws Committee be constituted "Not later than sixty days following the close of each convention," and that the committee, "shall adopt its report not less than seventy days prior to the convention and the Secretary shall cause it to be published on the Party's website not less than sixty days prior to the convention." The Bylaws Committee has approximately 10 months to do its work.

Yet under Bylaw 15.3, the Platform Committee is not even constituted until 30 days prior to the convention (unless all counties appoint several months prior to the deadline, which in reality doesn't happen). Appellants assert that it is relatively simple for a committee to adopt and publish their report a month before the committee is even constituted.

Appellants also complain that "there were no public notices of the committee meetings thereby depriving interested members of the opportunity to offer input and perhaps influence the committee members in a different direction." Respondents do not agree that this is even true, but again, there is no rule requiring such notices, thus the complaint does not merit the action requested. Also, appellants seem to presume that the result of more input from other party members would have pushed the committee members in a different direction, yet the convention delegates were in favor of the direction taken by the Platform Committee.

During the 2018 LPCA convention, delegates rejected Proposal V from the Bylaws Committee which would have moved the appointment of the Platform Committee Coordinator to 90 days prior, rather than 30 days prior, along with other proposed changes. It has been this way for many years in the LPCA. See p. 12 of those convention minutes, which are posted here on the party's website:

https://u1myo26o1t789cb2l4fjwcx8-wpengine.netdna-ssl.com/wp-content/uploads/2018/06/LPC_Convention_-Minutes-4-28-to-4-29-18-Final.pdf

During the 2019 LPCA convention, recommendation 4 from the bylaws committee again proposed to move the appointment of the Platform Committee Coordinator from 30 days prior to 90 days prior, along with other proposed changes. Though the early draft convention minutes do not yet show the details, the parliamentarian's notes indicate that the substitute motion adopted was to only change the coordinator's appointment date to be 90 days prior and make no other changes to the text. That substitution was adopted, and it was then adopted as the main motion. The updated bylaw still retains the feature that the deadline for county appointments is only 30 days prior to the convention. Since committees cannot act until all of their members have been

named, the delegates have still chosen to only give the Platform Committee 30 days in which to function.

The Platform Committee is restricted by the time frames established in the bylaws. They operated within the rules and the historically customary expectations of the LPCA delegates, meeting the day prior to the convention to finalize their report. Their report was made available to the delegates multiple times throughout the day prior to the vote to delete the platform. At timestamp 02:14:07 from Day 2, afternoon, the chair stated, "We're going to the platform committee report," invited the Platform Committee chair to the podium, then a few seconds later at 02:14:28 Chuck Hamm (for the second time) announced that he had copies of the report if anybody didn't get one. The chair, having seen the distribution of the reports, said, "Being that everybody has them (reports), we are going to start without it being on the screen" if there was no objection to starting without the report being on the screen. There was no objection.

Even though there were no requirements for the Platform Committee to give advance notice, it is interesting for appellants to so criticize when the Platform Committee went above and beyond the requirements and did actually make efforts to involve party members in their discussions and advertise what they expected to propose. These efforts are even mentioned numerous times in the video referenced by appellants:

> 02:19:08 —John Ward (as Platform Committee Chair) indicated the committee worked to reach out to members.
>
> 02:29:18 —Chuck Hamm (Platform Committee Coordinator) mentioned efforts of every single member of the Platform Committee members to reach out to members in their appointing county to get their input about preferences for the state platform versus the national platform.
>
> 02:36:05 —A delegate said he attended many of the Platform Committee meetings.
>
> 02:52:45 —A delegate said that her area's representative on the Platform Committee kept them informed about the rationales behind the committee proposals.

Document metadata identified Caryn Ann Harlos as the person who, at the very least, assembled the appellants' complaint. (More likely she was the principal author, given that the appeal mirrors her comments during convention, her Facebook video posted the day after the convention, and her unusual writing style.) She is a resident of Colorado, who during this portion of the convention proceedings said she had just joined the LPCA that day. Perhaps that is why she is unaware of the efforts made by the Platform Committee members to reach out to others within the party during their committee work. A new member with no personal knowledge is poorly positioned to testify about the alleged history. It is known that some members of the Platform Committee even communicated directly with some of the listed appellants about the committee efforts.

It is further curious that while complaining about alleged lack of transparency by others, Ms. Harlos did not publicly identify her role in developing the complaint or sign onto the complaint as an appellant (though she is an LPCA member).

The appellants' complaint accuses the Platform Committee of "ambush" which carries some very ugly connotations. It seems particularly unreasonable to use such loaded language in these circumstances, again impugning delegates with no supporting evidence, and in contradiction to readily available facts.

Re: Appellants' "Power Imbalance"

Again, the role of the JC as given in Bylaw 14.3, "shall be limited to the consistency of that action or inaction in accordance with the governing documents of the Party, including these Bylaws and documents to which they refer."

Appellants do not provide any rules citation that the remedy they request is justified for such a complaint. The only basis on which to overturn a vote of convention delegates is if it violated particular types of rules in particular ways (as explained at the beginning of this response). This section of the appellants' complaint references no alleged rules violations whatsoever. Appellants would have the JC use a utopian desire as the basis of overturning a vote of convention delegates which did not violate the party bylaws.

RONR p. 14 line 32–p. 15 line 3 puts the onus on members of an organization to learn the group's rules:

> "It is a good policy for every member on joining the society to be given a copy of the bylaws, printed together with the corporate charter, if there is one, and any special rules of order or standing rules that the society may have adopted as explained below. **A member should become familiar with the contents of these rules if he looks toward full participation in the society's affairs.**"

The appellants are all long-time party members with extensive exposure to RONR and the LPCA rules. Three of them are former LPCA state chairs, and one of those has also been a national chair. At least one other appellant has served on the Libertarian National Committee. One appellant served as chair pro tem during this convention because of his familiarity with the rules. At least two of the appellants (and also the delegate who in an untimely manner requested consideration by paragraph) have served on the LPCA JC, the very body tasked with evaluating the consistency of party actions with the party rules.

Appellants are not credible when they plead ignorance. They would have the JC punish a majority of the delegates for the failures of some to do their duty to become familiar with the rules.

Appellants assert that differences in levels of familiarity with RONR supposedly places, "the board and committees in a superior position of power." There is no basis for an assumption that board and committee members are necessarily more knowledgeable of RONR than other convention delegates.

Appellants argue that, "Every attempt should be made by same to inform the delegates of their rights to reach a just result." Although noble sounding, it is a fairly extreme proposed requirement. Do the appellants really mean to suggest that no convention should ever be allowed to conduct business until all delegates had been thoroughly briefed about all of their options under RONR? That requirement would give to every delegate the power to veto or delay business by claiming to not yet have been fully informed of the delegates' rights, which would reduce Party conventions to a dysfunctional body.

Appellants imply that an experienced chair manipulated novice delegates, but the actual power dynamic was quite the opposite of what is implied. The chair was chairing her first convention with a room full of long-time party members. At various times the chair invited delegates to appeal a ruling (see timestamp 03:09:40), to make a motion to reconsider (see timestamp 03:22:15), invited other motions, etc. The chair of the Platform Committee, Mr. Ward, was also serving his first term in that position. It is due to the delegates' own choices to suspend the rules to consider other business first (candidate endorsements and a resolution) that the Platform Committee report, which was originally earlier and more prominent on the agenda, was pushed back.

Parliamentary procedure is meant to be mostly self-enforcing, except in extreme circumstances. For instance, while it's true that people who don't understand the procedure well will have difficulty participating fully, this has a side effect of creating an incentive for every attendee to study up. Thus, in the long run, this is a completely normal and self-correcting feature of any parliamentary assembly. To the extent any delegates on that floor felt outnumbered and "ambushed," this is not the result of any one vote or report but of a longstanding institutional culture which has allowed knowledge of parliamentary procedure and of the bylaws to decay and complacency about the roles of committees to flourish. Overturning the delegates' vote will exacerbate this condition, not alleviate it.

Re: Appellants' "The Party Bylaws Require a Platform"

Bylaw 2:

Appellants are simply incorrect in their understanding of the reason why there is a Bylaw that defines the organization's purpose. Bylaw 2 provides a list of authorized activities for the Party, for the stated purpose: to uphold, promote, and disseminate the philosophy and principles of libertarianism. These activities are the ones considered to be within the scope of the organization.

RONR page 571, lines 1-9 discusses the recommended contents of the bylaws (emphasis added):

> "In unincorporated societies, the object of the society should be concisely expressed in a single sentence, the various aspects or phases being written in sequence, set off by semicolons, or in lettered subparagraphs, also set off by semicolons. The statement should be general in its application, since it sets boundaries within which business can be introduced at the society's meetings—**a two-thirds vote being required to allow the introduction of a motion that falls outside the society's object**."

In addition, RONR page 113, lines 10-13 states:

> "A main motion that proposes action outside the scope of the organization's object as defined in the bylaws or corporate charter is out of order unless the assembly by a two-thirds vote authorizes its introduction."

This bylaw "sets boundaries within which business can be introduced." Appellants turn this basic understanding on its head by claiming that the items are mandated activities, rather than those allowed absent a higher voting threshold.

If one were to adopt appellants' novel view that the listing of activities in Bylaw 2 is mandated, then the fact that we don't actively engage in many of those activities listed would constitute ongoing violations of the bylaws.

Bylaw 2, paragraph H requires, *"Promoting, chartering, and coordinating County Central Committees throughout the state*." If there is a county which does not presently have an organized County Central Committee, is it a bylaw violation? Or if, as authorized in item A, the Party fails to "*Engage in political activity in **all** segments of the population?"*

Bylaw 2 merely establishes that having a platform is within the boundaries of the organization's purpose. It is not strange, then, to have other bylaws which reference such a platform and further define its operation, such as Bylaw 20, which limits the subject matter and describes how contents are added and removed.

Bylaw 20:

Bylaw 20 states, "*The Party Platform shall consist of a number of planks which state the Party position on specific state and national issues. The Platform may be amended by deletion, substitution, or addition of any plank at any Party convention. The delegates may, by majority vote, delete a plank. The delegates, by a two-thirds vote, but not less than a majority of all registered delegates, may add a new plank, or substitute a new plank for an old plank.*"

Appellants claim Bylaw 20 "requires" that planks be retained that are specific to California, but this cannot be. There is no requirement in our bylaws or otherwise that the State Party have a platform, only boundaries on what the contents of such a Platform shall include. For example, we could not have a plank that addresses international issues like the European Union or local issues such as a specific ordinance unique to Los Angeles.

Consistent Bylaw Interpretation of "Shall"

Appellants cite Bylaw 20, Section 1, the first portion of which begins:

> *"The Party Platform shall consist of a number of planks which state the Party position on specific state and national issues. The platform may be amended by deletion, substitution, or addition…"*

The next sentence also authorizes delegates to amend the platform by deletion. Appellants argue that the deletion of all text in the platform is prohibited because the word "shall" is used above.

Respondents note that Bylaw 10, Section 1 begins with identical phrasing:

"The Party officers shall consist of a Chair, a Vice-Chair, a Secretary, and a Treasurer."

Using the same logic applied by appellants, since this passage also uses "shall" does that mean that an officer position cannot be vacant for a period of time? Is it a bylaw violation for an officer to resign unless his successor has already been chosen? That is not the common understanding of this bylaw within the LPCA.

Just as the bylaws give convention delegates the authority to amend the platform by deletion, Bylaw 10, Section 7 also gives the Executive Committee the authority to remove an officer and create a vacancy to be later filled, even though the bylaws say "*The Party officers shall consist of...*" It is not a violation of the bylaws for the Executive Committee to create an officer vacancy; it is expressly allowed by the bylaws. Nor is it a violation of the bylaws for the delegates to use deletion to create a platform vacancy to be later filled.

Similarly, Bylaw 15.3 says, "*The Platform Committee shall consist of a coordinator and one delegate from each County Central Committee*." If a county central committee does not make an appointment to the Platform Committee, is that a bylaw violation? The word "shall" is used. If appellants wish to now argue that such a violation means that the Platform Committee itself was improperly constituted, so their proposals were out of order, they should proceed with caution. (To be clear, we do not agree with that logic.) Such an interpretation would likely mean we've never had a properly constituted Platform Committee, because counties do not all make appointments, and thus the LPCA has never really had a platform anyway.

Similarly Bylaw 21, Section 1 says, "*The Party Program shall consist of up to five planks*…" The same Bylaw 10, Section 5 cited by appellants requires that the most recently adopted program be posted on the website. In some years there has been no adopted program, yet that has not been decried as an "absurdity."

Within the same bylaws, the identical words in identical language constructs should be interpreted consistently. Given the commonly understood nature of the other uses of the "shall" construct in the bylaws, it is not unreasonable for the delegates to believe that having text in the platform is not mandated by the bylaws.

If a bylaw ambiguity exists, RONR prescribes that the assembly (not a judicial committee) is the body which ought to interpret it. See RONR p. 588, line 25+. Note that it says, "If a bylaw is ambiguous, it must be interpreted, if possible, in harmony with the other bylaws." That would include other passages which use the "shall consist of" language.

<u>Other Implications</u>

During this convention, after the platform had been deleted, two other motions to adopt replacement text were moved but failed to achieve adoption thresholds.

Suppose, however, that one of them had been adopted, and a delegate preferred the prior text over the newly adopted text. Suppose the unhappy delegate appealed to the JC on the basis that the whole portion of the convention regarding the platform should be overturned because for the few minutes between the motion to delete the old platform and the motion to adopt replacement language, there had been a vacancy in the platform text, violating Bylaw 20 which requires the existence of text in the platform at all times. Would it be proper for the JC to do as plaintiffs request here and "declare the entire platform voting portion … null and void" because there had been a period of time with no platform? Would the JC restore the prior platform text over the wishes of a supermajority of delegates who voted to adopt different language?

If "shall" in this bylaw means that there can at no time be a vacancy in the text of the platform, what's the difference between that scenario and what the JC is now being asked to do?

Suppose that there were only one plank in the LPCA platform. Suppose that a delegate appealed that plank to the JC under Bylaw 20, Section 2 alleging it "to be in conflict with the Statement of Principles to the national Libertarian Party." If the JC finds the argument to have merit, that bylaw permits the JC to veto the plank, making it null and void. Would it be a bylaw violation for the JC to veto the plank, since it would result in empty platform text? Or would the appellants argue that the JC could take action that would result in an empty platform, but the delegates cannot do so?

The use of the phrase "shall consist of" in Bylaw 20 should not be interpreted in such a manner as to deprive convention delegates of their expressly granted right to delete, or to deprive the JC of their expressly stated task of vetoing a plank found to be in conflict with the national statement of principles.

Appellants would have the JC find that the word "shall" is sufficient to force a majority of convention delegates to accept a platform that they do not wish to represent them, even though the bylaws allow platform deletion by a majority vote.

Other Bylaw References to a Platform

Appellants note other areas of the bylaws which make reference to a platform and argue that having no text in the platform renders the other following provisions absurd and unintelligible. Respondents argue that to the contrary, it makes it easier to avoid violating those other provisions, as they are not currently operative.

Unclean Hands

At 03:06:25, while the motion to adopt the text of the national platform was pending, one of the appellants inquired, "If this motion on the floor fails, and our bylaws stipulate that we have to have a party platform, does that invalidate the prior vote to eliminate the party platform?" The chair gave a negative response. The appellant in question accepted the response, and after the motions to adopt new platform text failed, he did not appeal that question to ask his fellow delegates to decide it.

A few minutes later at 03:31:30, when the motion to instead adopt the text of the national statement of principles was pending, the same appellant spoke to say that though he supports the text of the motion, he is opposing it, and if the motion fails he will find some way to appeal to the JC asking to overturn "the ridiculous decision this body made." He was asking his fellow delegates to prevent the adoption of any platform text, intentionally inflicting the perceived injury, so that he could have a minority's veto by appealing to the JC. A few minutes later at 03:42:00 it required a unanimous vote to adopt the motion, yet a tiny number of people (perhaps as few as 3-4 by the sound on the video) did what this appellant advocated and voted against the motion.

Re: Appellants' "Relief Requested by Petitioners/Appellants"

The appeal implies that overturning the vote will restore confidence in the Libertarian Party, but this is offered without support as though it is self-evident. If it is thought by some to be irregular and controversial to delete a platform this way, it should also be irregular and controversial for a smaller and less representative committee to restore it this way.

Appellants argue that it's okay to do this because delegates should be happy to just do it again next time if they wish. If that is all that is necessary to overturn a delegate vote, then any prior action which did not violate the rules could be overturned on such grounds because it is always true that future delegates could just do it again if they wanted to. The election of a chair could be overturned just because delegates could re-elect that person in two years. By the same rationale, we could argue the opposite, that the delegates can restore the prior platform next time if they wish, therefore the JC should not act.

This is not about what hypothetical delegates could do in the future. This is about honoring what actual delegates legitimately voted to do this time. The appellants would have you ignore the interim harm that, until the next annual convention, the party would not be abiding by what the delegates voted to do.

On the motion they wish to overturn, a quorum was present, and the bylaw-required voting threshold was met. Reasonable people can disagree about what Convention Rule 8 requires, but there was no bylaw violation regarding adoption of the motion to delete the platform, therefore RONR gives the JC no grounds to overturn it.

The questions of how other motions later in the convention were handled, even if everything appellants allege were true, still would have no bearing on the motion that they wish you to overturn.

If a mistake on a later motion invalidates a motion adopted earlier in the day, why would it not similarly invalidate ALL motions adopted during the convention? Why would appellants get to pick and choose to only overturn the motion to delete the platform? Why not overturn all the officer elections, candidate endorsements, bylaw changes, etc.? They could argue that delegates MIGHT have later chosen to rescind or reconsider those actions, too.

Conclusion

The appellants misunderstand the fundamental concept that a bylaw defining an organization's scope of permissible activities (e.g. adopting a platform) is not a mandate for those activities – and that activities outside that scope simply require a higher voting threshold – and they fail to recognize that other bylaws simply spell out the contents and procedures of permissible activities. To adopt the appellants' approach to this and other bylaws would lead to absurd results.

The appellants argue that the JC should only follow the rules selectively – when appellants believe the rules favor them. They argue for enforcing rules that don't exist. To the extent they reference existing rules, they often misstate those rules, misapply them, or ignore the fact that raising a point of order after the convention is no longer timely. Lastly, the appellants fail to grasp that the convention has the right to determine the meaning of its rules in cases where there is ambiguity.

The JC should only step in where there is a clear violation of the bylaws, not substitute its political judgment for the convention's interpretation of a rule of order. There was no such violation. As such, the only correct decision is for this body to respect the votes made by delegates meeting in convention and to reject the appeal.