

# Opinion of the Judicial Committee of the Libertarian Party of Pennsylvania In Response to the Petition of Marc Bozzacco and Michael Heise

February 6, 2020

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## 1. INTRODUCTION

To the Membership of the Libertarian Party of Pennsylvania:

On Wednesday, January 1, 2020, the Judicial Committee received a petition from party members Michael Heise and Marc Bozzacco requesting an interpretation of the Bylaws and Rules of the Libertarian Party of Pennsylvania on six specific issues and waiving their right to an immediate hearing.

A hearing was held with the two members and the entire Judicial Committee on January 25, 2020, to review the petition. Committee members included:

- Ken Krawchuk, Chair
- Chad DeSantis
- Grant Meckley
- Roy Minet
- JT Shultheis

The questions raised and the subsequent rulings appear below, plus an initial ruling on jurisdiction. The text of their submitted petition is shown *in italics*, and quotes from official Party documents are shown in non-proportional font.

In addition to providing the rulings, the Committee is urging Party action on several tangential issues, two of which are mandatory, also included below.

Audio of the one-hour hearing is temporarily available at <http://KenK.org/In Re Bozzacco and Heise.m4a>, and should be migrated as soon as possible to a permanent location with other party records.

## 2. JURISDICTION

Prior to reviewing the submitted petition, the Judicial Committee first addressed the question of jurisdiction via the following motion:

*Motion that the Judicial Committee does not have jurisdiction because the named parties in questions 1, 3, 4, 5, and 6 are not present.*

Moved: Chad  
Seconded: Grant

### **Discussion:**

The issue of jurisdiction focused primarily on the question of what constitutes naming, such as: Does “the chair” in the text of the petition refer to the chair in general or the current chair?

Voting Yes: Chad, Grant  
Voting No: Roy, JT

Motion fails for lack of a majority.

### **Additional Comments from Committee Members:**

In support of a Yes vote:

**Grant and Chad:** We wish to express our dissenting opinions on how we believe the Judicial Committee did not have proper jurisdiction to hear this case.

Please understand, and this bears repeating, that our opinion here does NOT signal that we feel Mr. Heise and Mr. Bozzacco do not have legitimate concerns. We are not implying that they were not seriously wronged nor do we suggest they do not have a case to make before the JC. Our grievance is with procedure and how the case was handled. Our objections distill to three main premises.

### **Premise 1:**

Article VII Sec 4 of the bylaws implores the JC to *“ensure each party, if any, named in the petition or appeal, including the requestor(s) to a hearing the right to represent his or her interests in the manner of his choosing.”* The petition currently before the JC names **"The Chair," "An officer of the LPPA who unilaterally deletes video and/or audio recordings of a board meeting," [the only, ever] LPPA Staff Member", "the treasurer," "the secretary," "an LPPA Board member (who asked for a treasury report)"**. In order for a fair trial, these individuals in these roles have a right to represent their interests before the JC. The JC utilized a legal loophole to unjustly violate the spirit of this bylaw. These individuals were denied their rights.

### **Premise 2:**

Article IV Sec 4 of the constitution states *“the Judicial Committee shall be the final body of appeal in all matters regarding interpretations of the Constitution, Bylaws, and Rules or Resolutions of the Party.”* The petition currently before the JC was not brought before the LPPA board for initial appeal. Therefore the petition is out of order.

### **Premise 3:**

Article VI of the policy manual instructs the JC to *“review any question of non-compliance with LPPA Constitution, Bylaws, put forward in writing to the Committee by any LPPA member in good standing to determine the need for committee action.”* The case brought to the JC was deliberately worded in an attempt to remove any parties of guilt by specific name. It was argued as an abstract hypothetical despite the thinly veiled defendants who were not present to discuss *issues of law* (is it against the rules to do X) nor *issues of fact* (did they actually break the rules). Article VI does not make any provision for hypothetical questions nor would consideration of any such hypothetical merit “committee action”.

Furthermore, given the JC is not held to honor precedent, if the JC has separated issues of law from issues of fact in the past through piecemeal hearings, it should not do so again. It wastes unnecessary time, encourages adjudication outside the established judicial policy, and may, inadvertently or otherwise, sideline interested parties, and encourages similar masturbatory exercises of jurisprudence. If a petition in question does not name a defendant, the JC should solicit “interested parties” and the bar to allowing them speaking recognition at the hearing should be low as possible. Despite the purported benefits of doing things piecemeal, it does not prevent the “sullyng of a good name”. No one can “read the writing on the wall” unless the issue of fact is established, or the infraction is so obviously *prima facie* (i.e. a convention was not properly announced at the right time). Unless the tongue-in-cheek defendants are truly penitent (guilt having not been formerly established), it will not change anyone’s misdeeds.

Respectfully submitted,  
Grant Meckley and Chad DeSantis

In support of a No vote:

**Ken:** Although I did not vote on the jurisdiction question, in general I approve of the approach that Marc and Mike have taken to this issue, an approach that has been used by our JC twice before in my memory (eight questions in 2001 with JC Chair Art Farnsworth, one question in 2009 with Jim Babb as plaintiff). Rather than accusing one or more individuals of wrongdoing, they chose instead to question the action, not the person. This is the same approach I use in campaign debates. I always treat other candidates as good people (even if

they're not); but I won't hesitate to point out how their actions could be following a demonstrably-better path. I'll never attack the person.

Regarding named defendants, "Chair" is a lot of people, not just the person warming the chair at any given time. With the issue at hand, not only was no one named in the petition, no offense was named either. How can you have a hearing when you don't know what action the person is being accused of performing/not performing? Or which Chair, for that matter? The short answer is: You can't. You'd need to know both. Without a named person and a named action, no defense could be possible.

Regarding the question, "Should the Judicial Committee consider hypothetical questions," the short, non-hypothetical answer is Yes. And not only does the formal vote of the JC agree with our considering these sort of hypothetical questions, so also do our Bylaws. Article VII Section 4 says, "The parties to a hearing must include: A) the member(s) requesting the hearing, and B) the member(s), ***if any***, named in the petition ***or*** appeal" (emphasis mine). What sort of hearings would have no members named? Ones like the issue at hand. Does the JC only handle appeals? No, we also handle petitions. What sort of petitions do we handle? According to Section 4 of the LPP Constitution, "[A]ll matters regarding interpretations of the Constitution, Bylaws, and Rules or Resolutions of the Party", even hypothetical ones. And it's been done by the JC twice before since 2000.

### 3. PETITIONERS' QUESTIONS

*To the members of the LPP Judicial Committee:*

*As the final body of appeal in all matters regarding interpretation of the Constitution, Bylaws, Rules, and Resolutions of the Party, we [Michael Heise and Marc Bozzacco] hereby request an interpretation regarding several LPPa matters, specifically:*

#### 3.1 Provable False Claims

*1. Is it a violation of the bylaws when a LPPa staff member makes provably false claims about an individual member of the LPPA in a public setting, or is this considered libel or slander and thus a violation of Bylaw Article II, Section 1 and 3? (See also: Bylaws Article VI)*

#### **Discussion:**

The cited sections of the Bylaws include:

#### ARTICLE II. MEMBERSHIP

##### Section 1 - Establishing a Membership

A person shall become a member of the Party by fulfilling all of the following qualifications:

- Making application.
- Paying such dues as prescribed by the Board of Directors.
- Explicit agreement with the following statement, either by signature or electronic means: "I hereby certify that I do not believe in or advocate the initiation of force or fraud as a means of achieving political or social goals."

##### Section 3 - Suspension of Membership

The Board of Directors shall have the power to suspend a member for failure to maintain all of the qualifications of membership established in Article II Section 1 or for cause by a two-thirds vote of the entire Board of Directors. A member may be suspended by the Board for cause for misrepresenting the principles of the Party; endorsing or campaigning, in the name of the Party, for a candidate for public office in opposition to one nominated by the Party; or for running for

office purporting to have been nominated or endorsed by the Party without having received such nomination or endorsement; or for other reasonable cause. Notification of suspension shall be made in writing, and is subject to written appeal as described in Article II Section 4 within fifteen days of notification. Failure to appeal shall result in termination of membership.

Also relevant to the question is the Communications Policy contained in the Policy Manual, Article V, Sub-section 9d et seq., which says:

d. Moderation

- a. There will be no moderation by board members or the chair
- b. Anyone who is abusive will be filtered out as spam by all individuals (including board members) who are offended by the abuser in question.
- c. Everyone here knows how to act as an adult. If everyone behaves as an adult, nobody will be forced to create e-mail filters.

The Policy explicitly leaves dealing with inappropriate communications to the individual. That means anyone can say anything about anyone else and not violate the Policy. Were this the only authority guiding the Party, the answer to question #1 would be No.

However, Robert's Rules of Order, Newly Revised, (p43) says: "Speakers must... maintain a courteous tone, and—especially in reference to any divergence of opinion—should avoid injecting a personal note into debate. To this end, they must never attack or make any allusion to the motives of members." There are many other places where Robert's prohibits rude, insulting behavior, not only against individuals, but also in motions (p344). Most importantly, Robert's charges the presiding officer with the duty of "enforcing rules related to debate and those relating to the order and decorum" (p450). Since the Communications Policy charges individual members with that responsibility and not the Chair, the Policy contradicts Robert's. Because Robert's is authorized in the Bylaws as the official rules of order, where the Communications Policy is merely a motion passed by the Board of Directors and not of the same high order as Robert's, the Policy is null and void and cannot be enforced.

That said, no member has the privilege of making any false claims, whether they are a board member, staff member, or regular member, and depending on the severity of the false claim, could indeed be a violation of Article II Section 1 Bullet 3 (the N.A.P.), thereby possibly warranting the use of Section 3 (suspension of membership for cause).

Voting Yes: Roy, Ken  
Voting No: JT

The answer to question # 1 is Yes, with the Chair breaking the tie.

**Additional Comments from Committee Members:**

In support of a Yes vote:  
None.

In support of a No vote:  
None.

### 3.2 Deleting Party Records

*2. Is it a violation of the bylaws when an officer of the LPPA unilaterally deletes video and/or audio recordings of a board meeting? (Policy Manual Section 4, Sub-section C, Points 2,3,4) (Policy Manual Section 5, Sub-section 5) (Policy Manual Article 5, Section 8)*

**Discussion:**

The cited sections of the Policy Manual include:

Article IV:

- c) The Secretary shall
- 2. keep on file all committee reports;
- 3. have access to all Party records;
- 4. Make the minutes and records available to members online; minutes posted on the website within five days of the adjournment of a meeting. Any amendments to the minutes will be handled as soon as possible but before the next board meeting

Article V:

5. All reports, meeting agendas, and/or minutes shall be made available on-line, and so will the video archive of the live stream of each board meeting.

8. Business will be conducted in accordance with the bylaws, and an archive that can be accessible, at any time, by the membership will be maintained in a place that is well marked to promote transparency and enable members to find such archives easily, at their convenience.

Policy Manual Article XV might also have been cited which says in part:

Nobody shall have any authority to delete party records. Once a record is made having anything to do with party business, said record shall become property of the party and thus subject to this policy.

It is clear from the cited sections of the Policy Manual that no one has the power to delete any party records without explicit authorization from the Board of Directors.

Voting Yes: Chad, Grant, Roy, JT

Voting No: None

The answer to question #2 is Yes.

**Additional Comments from Committee Members:**

In support of a Yes vote:

None.

In support of a No vote:

None.

**3.3. Sharing Party Reports**

*3. Is it a violation of the bylaws when the chair instructs the treasurer not to share a treasury report with a LPPA board member when asked for it? (Policy Manual Article IV, Section D, Subsection 3)*

**Discussion:**

The cited section of the Policy Manual includes:

- d) The Treasurer shall
- 3. provide monthly accounting reports including beginning balance, income and expenditures for the time period, and ending balance and as necessary, Expense vs. Budget or other special reports.

Also relevant to the question is Section 4c:

- c) The Secretary shall
- 4. Make the minutes and records available to members

It is clear from the cited sections of the Policy Manual that no one has the authority to instruct any Party officer not to perform their official duties, or to withhold any Party information from any member.

Voting Yes: Grant, Roy, JT  
Voting No: None

The answer to question #3 is Yes.

**Additional Comments from Committee Members:**

In support of a Yes vote:  
None.

In support of a No vote:  
None.

**3.4 Withholding Party Records**

*4. Is it a violation of the bylaws when the chair of the LPPA withholds video and/or audio recordings of a board meeting from the secretary? (Policy Manual Section 4, Sub-section C, Points 2,3,4) (Policy Manual Section 5, Sub-section 5)*

**Discussion:**

This covers the same issues as question #3 above, with the same citations, reasoning, and conclusions.

Voting Yes: Grant, Roy, JT  
Voting No: None

The answer to question #4 is Yes.

**Additional Comments from Committee Members:**

In support of a Yes vote:  
None.

In support of a No vote:  
None.

**3.5 Board Meeting Agenda**

*5. Is it a violation of the bylaws when the chair tells a LPPA member that a complaint will be added to the schedule of the next board meeting and then does not include it on the agenda? (Section IV a) 5. And 7.)*

**Discussion:**

The cited sections of the Policy Manual include:

- a) The Chair shall

5. formulate the agenda of the meeting (with the help of the Board and in some cases, the membership);
7. recognize those wishing to speak at board/business meetings;

Although the agenda is formulated by the Chair at the Chair's pleasure, there is no requirement that any requested item be explicitly listed on the agenda. Further, only a member of the Board can subsequently request items be added or removed, with the change subject to vote by the Board. Party members have no say in the process of creating, adopting, or changing the agenda of any meeting of the Board of Directors. According to Robert's, the Board "has the right to determine who may be present at its meetings and to control its hall while the meeting is in progress; but all members have the right to attend... Non-members, on the other hand—or a particular non-member or group of non-members—can be excluded at any time from a part or all of a meeting." All this is in accordance with Robert's and the Policy manual.

Voting Yes: None  
Voting No: Grant, Roy, JT

The answer to question #5 is No.

**Additional Comments from Committee Members:**

In support of a Yes vote:  
None.

In support of a No vote:  
None.

**3.6 Votes that Did Not Occur**

*6. Is it a violation of the bylaws when the chair makes provably false claims to LPPa members and board members about a board vote taking place that never took place? (Policy Manual Article IV, Section 4) (Bylaws Article II, Section 1)*

**Discussion:**

The Bylaws cited sections includes Article II Section 1 (the N.A.P.) as it appears in question #1 above. There is no Section 4 under Article IV of the Policy Manual.

Regardless, this covers the same issues as question #1 above, with the same citations, reasoning, and conclusions.

Voting Yes: Grant, Roy  
Voting No: None

The answer to question #6 is Yes.

**Additional Comments from Committee Members:**

In support of a Yes vote:  
None.

In support of a No vote:  
None.

## **4. RELATED ISSUES**

Having ruled on each of petitioners' questions, it should be pointed out that the remedy for any perceived (questions 1, 2, 3, 4 or 6) violations must (at least initially) be via the Board of Directors, not the Judicial Committee. Also, it must be noted regarding question 6, that, if the Board were actually following its own policies, the answer to whether or not a given motion passed (or ever existed) should have been easy for petitioners to have looked up in the meeting minutes.

In addition to these rulings, in researching the issues there were several tangential issues that arose, some requiring immediate action from the Board of Directors and the upcoming Convention.

### **4.1 Communications Policy Issues**

First, two flaws were exposed in the Policy Manual. One is mentioned in the comments related to question #1: The moderation policy outlined in Section V, sub-section 9d et seq. is null and void, and must be immediately removed.

### **4.2 Judicial Committee and the Policy Manual**

Second, regarding Policy Manual Section VI related to the Judicial Committee, the Board of Directors has absolutely no role in creating, altering, or removing any policies regarding the Committee. Only the Constitution and Bylaws can do that. Section VI of the Policy Manual is null and void, and must be immediately removed.

As a point of information, when evaluating any party rules the order of precedence (highest to lowest) is:

1. The required vote of the delegates (majority, 2/3, 3/4) at a Party convention;
2. The Constitution;
3. The Bylaws;
4. RONR (except as overridden by 1, 2 or 3);
5. Judicial Committee Rulings;
6. Board of Directors actions;
7. The Policy Manual.

### **4.3 Issues with the Party's Constitution and Bylaws**

Third, it is the opinion of the Judicial Committee that the Libertarian Party of Pennsylvania currently does not have a legal set of Bylaws. They cannot be our legal bylaws because the trail of amendments (which must be maintained by TIMELY submitted and approved minutes) has been lost and cannot be recovered by anybody piecing together fragments of whatever from wherever long after the fact.

Therefore, the Judicial Committee strongly recommends that the 2020 convention ratify without debate the currently posted version of our Bylaws before considering any amendments.

### **4.4 Addressing Issues with the Party Rules**

Fourth, given the state of the Policy Manual and the recent confusion surrounding the official copy of the Constitution and Bylaws of the Party, it is the recommendation of the Judicial Committee that the Board of Directors appoint a small committee of qualified members to carefully review, revise and update the Party's governing documents. This review committee should be charged with the responsibility of producing revised documents to be posted for all Party members to review at least seventy-five days prior to the 2021 convention. Members would have thirty days to review and submit comments or suggestions to the review committee. The committee would consider any comments and suggestions before posting a "final" set of proposed documents with the required thirty days' notice before the convention. The documents could be adopted without debate at the convention after which amendments could be considered as usual.

Although the review committee should take a fresh and comprehensive approach, the following items are specifically noted:

1. The Policy Manual is especially out of date, incoherently nomenclatured and inconsistent with the Bylaws.
2. Since it has actually been a serious recurring problem, the handoff to new officers elected at the convention needs to be spelled out in more detail – especially the responsibility for timely producing an accurate, current and complete set of convention minutes, as well as updating the Party's governing documents for any changes enacted at the convention.
3. On occasion (e.g., 2012) it has proved to be too difficult for board members to call a Board of Directors' meeting against the wishes of the chair. Obviously, that should not be possible on a whim, but better that it be too easy than too difficult.
4. Bylaws should specify that, when citing parliamentary authority, county committee bylaws must state "The rules contained in Robert's Rules of Order, Newly Revised, shall govern the [xyz] County Libertarian Committee in all cases to which they are applicable and in which they are not inconsistent with the Bylaws or any special rules of order of the [xyz] County Libertarian Committee."
5. The Bylaws should require that the official versions of all Party records (minutes, treasurer's reports, etc.) must be timely maintained in a members-only section of the LPPA.org website. The Policy Manual could flesh out the details.
6. Whether or not to follow the more modern practice of merging the Constitution and Bylaws into a single Bylaws document should be considered.

## 5. SIGNATURES

Respectfully submitted,

The Judicial Committee of the Libertarian Party of Pennsylvania:

- Ken Krawchuk, Chair
- Chad DeSantis
- Grant Meckley
- Roy Minet
- JTShultheis