# BEFORE THE JUDICIAL COMMITTEE OF THE LIBERTARIAN PARTY

**Date:** 9/10/2021

**Petitioner:** Caryn Ann Harlos

**Subject:** Appeal of the LNC motion of 9/5/2021 to suspend and remove Petitioner as LNC Secretary, as per Article 6, Section 7 of the Bylaws.

**Interested Parties:** Members of the LNC, Joe Bishop-Henchman, as he is alluded to in the in the initial complaint against the Petitioner.

**Relief requested:** Voiding of suspension motion and reinstatement as LNC Secretary.

**Committee Jurisdiction:** Article 8, Section 2, subsection b, regarding suspension of officers, and Article 8, Section 2, subsection d, regarding voiding of National Committee decisions.

**Appearing on Behalf of Petitioner:** DL Cummings

## REPLY TO RESPONSE OF SELECTED LNC MEMBERS

1. **As stated in the original petition, Article 16 of the Bylaws establishes the current edition of Robert's Rules of Order Newly Revised (RONR, 12th edition) as the parliamentary authority which "*shall govern the Party in all cases to which they are applicable and in which they are not inconsistent with these bylaws and any special rules of order adopted by the Party*."**

Robert's is inconsistent with the Party Bylaws regarding disciplinary action for an officer only on two points when this disciplinary action is before the LNC as follows (Article 6, Section 7):

- The LNC has the authority to make the suspension decision.
- The suspension requires a 2/3 vote of the entire LNC excluding the vote of the officer facing that action.

That is the extent of the inconsistency.[1] No other inconsistent bylaws govern the LNC nor does any special rule of order on the subject—which the LNC *could have created but did not*— in order to dictate that a suspension could be done by a mere motion. Since the LNC has always had the power to make that rule but did not, the Bylaws must be construed in favor of the greater due process afforded by Robert's. There is a similar concept in contract law (which is very analogous to the relationship between the governing body and its individual constituent members and the Party members) in which contracts are construed against the drafter who had the power to make any disputable matters clear.[2] Nothing prevented the LNC from adopting such a special rule of order at any time prior to this *third attempt* to suspend the Secretary.

Further, the Respondents completely fail to address the clear implications of the wording of the terms of office in the Party Bylaws (Article 7, Section 3) which absolutely require a trial pursuant to RONR (12th ed.) 62:16. The two Bylaw provisions must be reconciled with each other and as

Article 6, Section 7 does not *prohibit* a trial, *require* suspension by motion, or give any actual procedural instructions other than a grant of authority and establishment of a voting threshold; the procedural requirements mandated by the wording of the terms of office must be followed, *i.e.,* a trial.

The process found in Robert's which is "applicable and not inconsistent with these bylaws and any special rules of order" remains. That process requires a trial and further grants the Petitioner the right to have one. Respondents rely on a gross, and perhaps deliberate, misinterpretation of the construction of the Bylaws and their relation to Robert's to arrive at an incorrect assertion which has been refuted in the Petition and remains unrebutted.

**2. The Respondents make multiple false assertions regarding Robert's and the Party Bylaws.**

A. The Respondents falsely claim that members at large are equivalent to officers.

In regard to the claim that the members at large are equivalent to officers under the provisions of Robert's, RONR (12th ed.) 47:1 clearly states, *"Every society should specify in its bylaws what officers it requires…"* (see also 56:23). Neither the Chair nor the LNC can create an officer or declare that at-large members are the equivalent to officers under Robert's or the Party Bylaws. Article 6 ("Officers") Section 1 contains the sole and exclusive list of officers: Chair, Vice-Chair, Secretary, and Treasurer. A member-at-large of the LNC is not an officer. Further, the position of member-at-large is not even mentioned under Article 6, and the treatment of same is kept noticeably separate in the Bylaws.

Any reference to a member-at-large cannot be a reference to an officer. This is effectively a bait and switch tactic by the Respondents. Thus, the clear language of RONR (12th ed.) 62:16 requiring a trial for *officers* is clearly and absolutely distinguishable from any opinion regarding the lack of any requirement for a trial for members at large.

B. The Respondents wrongly rely upon the fact that specific Bylaws wording for disciplinary actions that involve a trial is absent in the Party Bylaws.

The reference relied upon by the Respondents [RONR (12th ed.) 56:30] is neither a requirement nor anything remotely resembling one, but rather, is a suggestion to aid member interpretation of Bylaws since the implications of the difference between using "and" and "or" in the provisions of the officer terms of office may not be widely understood. Ironically, this fact proves the Petitioner's assertion that the terms of office provision in the Party Bylaws is critical in determining whether or not she is due a trial, and under these distinctions, she is. It is telling that the Respondents fail to mention that the same section also contains suggested Bylaws wording for when officers can be removed by a mere motion which is **also absent** from the Party Bylaws. The Respondents cannot have it both ways.

C. The Respondents improperly categorize prior decisions as binding precedent.

Chair Bilyeu specifically (and correctly) ruled that the precedent was not binding during the consideration of the motion to remove the Petitioner.[3] If the Chair wishes to change her mind,

the 2008 Robert/Balch opinion is not relevant since, as argued above, it deals with removal of a member at large, not an officer for which Robert's has additional and stricter due process requirements when the terms of office are defined as they are in the Party Bylaws.[4]

Further, the Respondents are quite selective about what precedent they choose to follow. Mr. Moellman, who was acting Chair prior to Ms. Bilyeu, ruled that the Secretary was entitled to due process and has submitted a brief to this Body in support of same.

D. The Respondents make an improper appeal to authority and a grant of unwarranted weight.

A naked appeal to authority is a logical fallacy in which the mere fact that someone is an authority on a topic is used to establish the truth of an assertion. The Petitioner has also proffered a notable authority (Jonathan M. Jacobs, PRP, CPP) who is published regularly in the official publication of the National Association of Parliamentarians. Respondents argue that since the 2008 opinion was written by members of the authorship team of Robert's, they must be believed without question since they "know well what their book does and does not require."

First, Robert's is not "their book." They have contributed to a long line of work that began with General Robert over a century ago. Respondents act as if the book were written anew with each new edition and has provided no evidence that the provisions relied upon are the unique contributions of either Robert or Balch. Properly credentialled parliamentarians are all qualified to interpret and render opinions, and there is not a caste system in which the authorship team overrules everyone else. The resume of Mr. Jacobs speaks to his experience and qualifications (*see* Exhibit B to the Petition) and while the Robert/Balch opinion did not give a rationale for their opinion, the Jacobs opinion did. Further, the important provision at issue in this matter regarding terms of office (62:16) was not even part of the 2008 opinion!

The Respondents also claim, with no substantiation whatsoever, that it is consistently stated in parliamentary forums that "if an organization provides in any way for discipline of its members or removal from office, it thus removes or exempts itself from the disciplinary procedures in RONR." To say this is false would be an understatement. In a search of dozens of threads on this topic at the official Robert's discussion forum neither this statement nor its equivalent was found and in ones that might potentially related, the critical puzzle piece, the terms of office as discussed in 62:16, were not part of the discussion.

**3. The Respondents wrongly imply inconsistency on the part of the Petitioner in an unrelated matter and wrongly ascribe the stated reason for a bylaws change.**

The Respondents mention prior suspension motions concerning Arvin Vohra. The answer is quite simple: those situations were handled improperly. Mr. Vohra never objected, so it was never challenged. The right to a trial was his to claim. Mr. Vohra was known to eschew formalities, and the possibility of such a situation being handled in an executive (secret) session was rejected by him and may have been the reason he did not object; but we do not know. Respondents' insinuation that Petitioner must know that a trial is not required because she did not insist on one at that time rests on the foundation that she was as knowledgeable about

RONR and the Bylaws then as she is now, and that is quite simply false. Since that time, she completed a distance learning course on parliamentary procedure, passed the National Association of Parliamentarians' membership exam, embarked on a course of study to obtain the registered Parliamentarian credential; and began the examination for same. The fact that the Petitioner supported those motions is prejudicial and irrelevant as the Respondents fail to mention that her practice as Region 1 representative was to follow the will of her region on all substantive matters with the same vote requirement as required of the LNC. Region 1 voted by a 2/3 vote of all constituent states to direct her to support those motions. Such a high standard was not required by any of the regional representatives in this matter.[5]

Lastly, Respondents insinuate that the failure of a Vohra suspension motion by his own vote is the reason for the 2020[6] change in the Bylaws which added the exclusion of the vote of the officer who is the subject of a suspension action. That is sheer speculation. The rationale given in in the Bylaws Committee report was "No person is fit to be their own judge, and no person should be participating in a vote on their own removal."[7]

**4. The Respondents falsely claim that the charges in the single motion are severable.**

The decision to combine all of the charges into one single motion was made entirely by the mover, and ratified by each of its supporters by their failure to move to divide the question. The conclusion of the Bill of Particulars makes it clear that it was the cumulative case of everything stated before that was the support for the suspension motion and not any charge on its own. Therefore, the rejection of any one of the charges necessitates overturning the entire action. The LNC could always start an action *de novo* with any remaining charges if it wished (with or without a trial depending on any resolution of that issue). It would be patently unjust for the LNC to be able to suspend based on a cumulative case but escape being overturned by claiming the charges were effectively separate motions.

**5. As has been stated in the original Petition, second ground, the charging document, the Ebke Motion titled "Bill of Particulars," fails to provide anything close to stated actions for removing the Petitioner. By not stating what these are, the LNC makes the case impossible to adjudicate. The Judicial Committee, not to mention the Petitioner, has to guess at what alleged is objectionable. Simply put, the LNC has not formed a case that is clear, and that lack of clarity dooms any meaningful decision.**

While there was a plethora of documentation presented,[8] it is impossible to draw a link to any of the claims in the Bill of Particulars. It claims that several sections of the Policy Manual were violated, but does not specify what actions comprise these violations, and a reading of the Policy Manual provisions make it apparent that they could not possibly apply. It is left to the Judicial Committee, the Petitioner, and possibly even to members of the LNC, <u>including those who voted in favor of it</u>, to guess at what is really meant to be the objectionable actions.

The Respondents have claimed that there need be no trial at the LNC level. Even if this theory of the Bylaws were correct, there is one at the Judicial Committee; thus, the Judicial Committee would become, on Petition, the trier of fact for the removal of officers. The LNC would then become the indicting body, drafting the charges and collecting the evidence to be used,

analogous to a grand jury. What the LNC has done with its Bill of Particulars would be analogous to a grand jury charging Petitioner with armed robbery, and telling neither her, nor the court where and when and how she supposedly committed the crime and what she allegedly stole from whom.

While a specific charging document, is covered under trial procedure in RONR, it is not part of the trial; it is specific and includes specifications for each charge. It is written, during that process, by a committee. It is then adopted in, whole or in part, by the assembly, especially knowing that an appeal was possible, if not likely. Even if an LNC trial was not required, nothing prevented the LNC from drafting formal charges as a motion. The mover of the motion could have offered it initially with charges and specifications. Alternatively, the motion, when pending, could have been referred to a committee to draft proper charges and specifications which would have been fully amendable and separable. The LNC did nothing but adopt an amorphous blob of a motion that is far too imprecise to be legitimately adjudicated.

The second ground of the Petition raised this point. Upon contact with the Party Chair on behalf of the Respondents, the Chair of the Judicial Committee made the following request: *"I really hope that the LNC will provide the JC with a detailed response to Ms. Harlos' appeal. Without such a response, I fear that the hearing could be unnecessarily lengthy. In my experience, the longer that such meetings are, the more divisive they can become."* This latest filing is a response to that request. The response is *"We respectfully request that the Judicial Committee summarily dismiss the second, third, and fourth grounds of the Petitioner's appeal."* In other words, even when a potentially improper second bite at the apple was granted, the Respondents were still incapable of claiming any impropriety to try the Petitioner.[9]

While the Petitioner will note that the LNC may adopt adjudicable charges at a future meeting (either with or without the trial being determined to be required) if the Judicial Committee were to reverse and remand this present action, this may only happen with the LNC taking the action and would require any process to begin *de novo*. This would require adjudicable charges to be fully debatable and amendable. This flaw is fatal to the current matter, as she must have the right to offer and vote on any amendments and to speak in debate. Further, the Respondents cannot "connect the dots" now. They are stuck with the case they presented as they presented it.

**6. The LNC relied upon a temporary condition in order to obtain the vote threshold required resulting in a situation in which if the vote were re-done with all members present the result would be different even though no member has changed their position.**

Only nine LNC members signed the Response with the rest being alternates.[10] This raises a significant (and long-standing) issue about the status of alternates on the LNC. The suspension motion requires a 2/3 vote of the **entire LNC** presumably to show a consistent super-majority support for something as dire as removal of a duly elected officer. However, there is not such consistent super-majority support for the suspension of the Secretary as two of the eleven affirmative votes were alternates and at least one of the two primary representatives were not in favour of suspension but would have voted in the negative or abstained, and it is believed the

other would have abstained though he has stated he is not sure how he would have voted as he was not there.[11] Neither of them signed on to the Response. Thus, we have the paradox of only having a temporary 2/3 support, and if the vote were held on a different day (when one regional representative was not in the last days of a governor's race and another did not have to leave early to attend to a pregnant spouse)[12] [13], the motion would be lost by either one or two votes **without any member of the LNC having changed their vote between the two meetings.** This is obviously not what the Bylaws intended, and it shows the claim of the Respondents to have the requisite support to be false. They do not have that support. Having a temporary 2/3 support via alternates should not be used to overturn the will of the delegates at convention. Many members rightly view the suspension motion as suspect, if not downright illegitimate, on these grounds. <u>There is not 2/3 support of the entire LNC for the removal of the Secretary.</u>

**7. The Respondents summarily dismiss the evidence of bad faith.**

The Respondents characterize the evidence of a coalition that were trying to get support to remove the Secretary <u>from the moment she was elected by the Delegates and far before they could have any alleged bad experience</u> as "speculative." Contrary to that characterization, the Petitioner had written evidence of this claim which written evidence backs up her additional claim of verbal confirmation (*see* Exhibit F of Petition). Petitioner also presented evidence of clear factional motivations by the maker of the present motion at the meeting. Respondents claim that any such evidence is not relevant to this current action as only the charges in the motion were adopted by the LNC. This is an illegitimate exercise in holism as the individual motivations for each vote necessarily make up the whole, and a show of bad faith in any of the supporters, poisons the whole.

**8. The Respondents outright misrepresent their efforts at de-escalation and the response of the Petitioner as well as the potential for an adequate defense.**

The Respondents claim:

> *In the present case, the power to suspend was not exercised lightly or without ample efforts to de-escalate and correct Petitioner's conduct. At no point did Petitioner accept or act on these opportunities. At the meeting where Petitioner was suspended, Petitioner was offered ample time to present a defense in any way Petitioner saw fit. The LNC found this defense unpersuasive and indicative of a total lack of intent to make amends or improve moving forward. For that reason, the requisite supermajority voted in favor of the suspension.*

This is false on every conceivable level. **There were NO previous attempts by the LNC to de-escalate.** There were no official censures or letters of reprimand; contrarywise, certain members of the LNC went from zero to removal – likely including the same LNC members who wanted to remove the Secretary from the moment she was elected. It was Ms. Harlos who initiated every attempt (except one to follow) at a less severe resolution. When Ms. Ebke presented an idea for mediation, Ms. Harlos at first could not support it as there was a pending complaint against Ms. Hogarth before the Chair, but as soon as that was resolved a few days

later, she informed Ms. Ebke that she could now support that motion.[14] Ms. Ebke never pursued further. Thus, Ms. Harlos requested Mr. Nekhaila to offer a substitute motion for mediation instead of the suspension motion. This was strongly rebuffed with a very strident and over-the-top email from Mr. Bughman that they demand "justice" which makes this whole situation seem much more deeply personal rather than professional. Additionally, at the time of the suspension motion itself, Mr. Nanna offered a motion to censure (at Ms. Harlos' request), and Ms. Harlos seconded the motion.[15] In the debate that followed, it was the LNC who rejected this offer, despite Ms. Harlos' disclosure that she had accepted Mr. Nekhaila's offer to advise her and her offer to include Mr. Ferreira in that role (which he rejected).[16] The reality that the Respondents would so grossly misrepresent these facts is deeply troubling.[17]

Further, Petitioner was NOT offered time to present a defense in "any way she saw fit." She demanded a trial and was denied. In a trial, she could present witnesses and ask questions of Respondents at a minimum. It is also disingenuous to claim that the Respondents were amenable to persuasion by any defense since several of them announced their decision before Petitioner was offered the chance to offer any defense.[18]

## PRAYERS FOR RELIEF

For the reasons noted in the Petition and in this Reply,

**The Petitioner requests summary judgement to reinstate her to the office of Secretary on the ground that due process, as required by the rules, was not followed; and**

**The Petitioner requests summary judgement to reinstate her to the office of Secretary on the ground that no adjudicable charges were raised and that no adjudicable charges in this case could be adopted now.**

## Endnotes

[1] This clause in the Bylaws supersedes the RONR requirement that the body which elected the officer could remove the officer and that the vote needed to remove the officer is a majority vote (62:16).

[2] ***Contra proferentem*** (Latin: "against [the] offeror"),[1] also known as "interpretation against the draftsman", is a doctrine of contractual interpretation providing that, where a promise, agreement or term is ambiguous, the preferred meaning should be the one that works against the interests of the party who provided the wording. [Black, Henry C. (2009). Garner, Bryan A. (ed.). *Black's Law Dictionary* (9th ed.). St. Paul, MN: West Publishing; American Law Institute (1981). "The Scope of Contractual Obligations". *Restatement (Second) of Contracts*. St. Paul, Minnesota: American Law Institute Publishers. § 206]

[3] *See* https://youtu.be/HApE36cvexk?t=10739 and https://youtu.be/HApE36cvexk?t=11939

[4] Additionally, if precedent is deemed to be important, the parallels between the accusations against Angela Keaton and the Petitioner are remarkable, including sharp political criticism of fellow LNC members in her personal online posts. Ms. Keaton was not suspended by the 2008 LNC. Either precedent is important, or it isn't. It cannot only be important when convenient.

[5] In fact, the only "yes" vote by a Region 1 state in this present matter was cast by the home state of the regional representative himself who not only did not require a 2/3 vote, counted abstentions as functional yes votes rather than no votes (and there were already 5 explicit no votes), and unduly pressured the region by threatening to resign if this motion did not pass.

[6] The Respondents incorrectly list the year as 2018.

[7] https://lpedia.org/w/images/1/17/2020-Report-of-the-Bylaws-and-Rules-Committee-FINAL.pdf page 11.

[8] As a reminder, there were 146 screenshots and PDFs plus 12 videos totaling ~16hrs. Assuming 1 minute to read and consider each of the 146 images/documents, a single individual would need 2+ hours to review. Added to the 16 hours of video results in 18 hours for one person just to review provided evidence. This multiplies by each LNC member and party members or delegates (who have a vested interest in the outcome). This type of evidence dump is known within debate circles as "elephant hurling" which is "referring to a large body of evidence which supposedly supports the debater's arguments, but without demonstrating that all the evidence does indeed support the argument." (http://web.archive.org/web/20180403214438/; http://www.astorehouseofknowledge.info/w/Elephant_hurling) **The purpose is to overwhelm with quantity and not quality.**

[9] To be clear, the Petitioner holds that the time for the LNC to perfect their motion was prior to passage, which time has long since passed, and they are now stuck with what they have.

[10] Eleven expressly affirmative votes are required to suspend.

[11] Mr. Nekhaila was a definite no or abstention as were the absent at-large representatives Mr. Raudsep and Mr. Smith. While Mr. Hewitt has stated he does not know how he would have voted since he was not present, all past conversations with him have led Petitioner to believe he would have abstained in objection to all of this drama at the national level and further the vote of the California Executive Committee was **not** in favor of suspension.

[12] Ms. Harlos did move to suspend the rules to make accommodation for the Region 2 Representative Mr. Nekhaila to attend via telephone as he needed to leave early to attend to his pregnant spouse (*see* https://youtu.be/HApE36cvexk?t=1734 . Chair Bilyeu said it could be raised just prior to hearing the suspension motion but did not permit Ms. Harlos to make it when that time came over her objections (*see* https://www.youtube.com/watch?v=HApE36cvexk&t=1734s). Unbeknownst to Mr. Nekhaila, but believed to have been known by the motion's supporters (and **if** this was known by the Chair, it would have disturbing implications for her ruling), Regional Alternate Mr. Sexton who previously advised that he could not attend, drove to Kentucky to be sure to be there at the time of the suspension motion. While this is certainly "legal," it is not clean dealing, and anything as serious as the removal of an officer should be done without any hint of gamesmanship for the good and peace of the Party. One will also note how quickly the supporters of the motion acted once it was confirmed that Mr. Sexton entered the room (*see* https://youtu.be/HApE36cvexk?t=9936).

[13] One of the alternates (Mr. Ferreira) was the subject of numerous complaints by Ms. Harlos of ham-fisted handling of her complaints about a prior assault. His reaction to the complaints was to attack her and accuse her of inappropriate comments. Not all complaints are ultimately well-founded, but they all must be allowed to be made if we are to have a culture in which people feel like they are safe to bring up serious violations. Each time Ms. Harlos had done so, whether or not her complaints were ultimately ill-founded, she faced immediate retaliation. In publicly explaining why he voted to suspend, Mr. Ferreira included Ms. Harlos' complaints against him which she had every right to make. In a personal phone call with her, he expressed deep resentment and anger at her complaints. Every single step of this debacle has led to a chilling effect for future members to raise concerns about prejudice and insensitive handling of complaints of actual or potential violence. It is truly appalling the way all of this was handled. *See* Exhibit I to the Petition.

[14] As Ms. Harlos no longer has access to her Secretary emails, she cannot attach the confirming emails, but this was verbally confirmed at the meeting, *see* https://youtu.be/HApE36cvexk?t=18649.

[15] *See* https://youtu.be/HApE36cvexk?t=17578

[16] *see* https://youtu.be/HApE36cvexk?t=18649.

[17] It should be noted that Ms. Harlos also has made official complaints against some of those who supported the motion for abusive and unethical behavior (one complaint was resolved by the Chair previously, multiple complaints were ignored, and two are pending). The scenario that is the foundation of this whole matter of an innocent LNC having to be subjected to a lone "abuser" could not be further from the truth. And every time Ms. Harlos tried to raise serious complaints about prejudice and a past assault, her complaints were never officially investigated or taken seriously but rather used as evidence that she was being abusive by complaining about abuse. There are deep institutional dysfunctions that need to be addressed and are not at all helped or solved by simply removing the person who points them out. Ironically, evidence of her complaints which should have been immediately taken up by the Chair and resolved are included in the data dump of evidence against her.

[18] *See* https://youtu.be/HApE36cvexk?t=10016, https://youtu.be/HApE36cvexk?t=13711, https://youtu.be/HApE36cvexk?t=14007, and https://youtu.be/HApE36cvexk?t=14398