

# APPEAL TO JUDICIAL COMMITTEE REGARDING BYLAWS, CONVENTION RULES, AND MEMBER RIGHTS' VIOLATIONS DURING CONSIDERATION OF THE PLATFORM COMMITTEE REPORT AT 2019 LPCA ANNUAL CONVENTION

It is fortunate that the 2019 LPC convention was recorded so that reliance on faulty memories can be minimized; thus providing two sources to examine to determine if any errors during the Platform Committee report deliberations were merely *pro forma*, causing concern, but not rising to the level of fundamental rights, or whether they were of such a nature to go against the very principles of the party and its governance structure.

## BACKGROUND

### GOVERNANCE STRUCTURE

The LPCA, writ large, is organized as a deliberative assembly under a set of bylaws and a parliamentary authority.<sup>i</sup> The principles underlying parliamentary law, as specified by RONR, are in place to balance the rights of multiple subgroups within the organization. This includes protecting the rights of the majority as well as the rights of the individual members and any minority views. However, RONR takes care to note that protection of a strong minority (*i.e.*, more than one-third) is the type of minority that is particularly in view.<sup>ii</sup>

### Party Principles

In speaking of principles, we are not referring to the broader Statement of Principles that guide public policy positions but of the spirit behind them which is protection of the rights of the individual and the fundamental sense of fairness that arises from this position as exemplified by various positions the state affiliates and the national party have taken over the years. And one thing is certain, any irregularity in voting protocol that prejudices or potentially censors a less powerful voice, is met with reproach; regardless of the letter of the law.<sup>iii</sup> Libertarians have a keen sense of justice, equity, and a level playing field, and take great pains to never appear as practicing what they condemn, being rightly suspicious of sleek lawyerly “explanations” that merely perfume the skunk.

### Recordings

The area of dispute involved the Platform Committee deliberations. The recording may be found here: [https://www.youtube.com/watch?time\\_continue=1&v=uSQRLlgSihs](https://www.youtube.com/watch?time_continue=1&v=uSQRLlgSihs) with the specific relevant portion beginning at timestamp 2:18:00.

## SPECIFIC VIOLATIONS INVOLVING FUNDAMENTAL MEMBER RIGHTS

### Mass Deletion/Mass Adoption of Platform Planks

The Platform Committee chair (PCC) stated the committee's recommendations to revise the platform in two inter-related steps: delete the entire existing platform in one vote and then adopt the entire national platform in one vote. At timestamp 2:20:00 the PCC moved to delete the entire existing platform. This is a clear violation of both the party convention rules and RONR. The applicable sections are reproduced below (additional emphasis added).

#### **Rule 8: Platform Committee**

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**. After the delegates have debated and voted on all of the Committee's recommendations, if time permits, any delegate may propose new planks or additional amendments from the floor, which the delegates shall vote on separately.

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#### **RONR, page 277 beginning at line 34 through page 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**.

While the party convention rules are suspendable and would supersede RONR, they were not, in fact, suspended—to put it bluntly they were ignored. *The body as a matter of right is entitled to consider all proposals plank by plank which is obviously a sanction against mass adoptions or deletions.* The chair advised the PCC of the procedure to move the recommendations and advised the assembly of the voting threshold required but did not advise of the existence of this convention rule, not through any mal-intent, but through honest mistake.

There was vibrant opposition to this proposal, certainly more than a strong minority as defined by RONR, and much of the discussion revolved around the fact that there should be planks retained that are specific to California as required by Bylaw 20; thus indicating a clear desire to consider the report plank by plank and demonstrating an ignorance of their right to this as a matter of course, trusting the direction of the chair, parliamentarian, and the PCC. Beginning at timestamp 2:30:40, a delegate referenced "our procedure" as consideration by plank and asked that this course be followed. This should have been taken as a point of order at that time. Member rights should not be prejudiced because they do not know the technical lingo of parliamentary law. Additionally, at approximately 2:37:35, a delegate noted that a mass approval would be an end-run around past failures to achieve a 2/3 consensus on issues such as the death penalty, implicitly arguing the impropriety of considerations en masse.

A point of order (beginning at 3:10:20 and following) was also raised on both the mass deletion and mass adoption votes citing the above section of RONR, and the chair was advised by the parliamentarian that the method of consideration by paragraph was *optional* (interpreting "advisable" as available but not *obligatory*) but RONR clearly states it is a matter of course UNLESS the body votes to do otherwise, which it did not. 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, that is, an affirmative action requesting consideration by paragraph must have preceded the point of order which of course did not happen. However, that is contrary to RONR which clearly states that consideration by paragraph in this instance is the default without any affirmative motion by the assembly required. In fact, an affirmative motion would be required to *wave* consideration by paragraph. The whole process was turned on its head, and the member raising the point of order requested independent parliamentary assistance and was denied.

## Point Of Inquiry Incorrectly Answered

Beginning at 3:09:00 a delegate asked if the assembly failed to adopt a new platform whether a motion to reconsider would be in order and was improperly told no because the motion made by the PCC did not make deletion of the platform conditional upon adoption of a new one. However, that conditionality is not required for a motion to reconsider which can be made by any qualified delegate for any reason. This instruction was later correctly stated, but the prejudice was already incurred, and the delegates were worn out.

## Voting Rights Violations

Voting on the mass plank deletion began at 2:40:50 by a rising vote with the chair informally counting the numbers at 36-32. A formal counted vote/division was then demanded. 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. Division of the Assembly is dealt with in RONR pages 280-282. 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, and that is not the only reason for division, particularly in a close vote. 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 fact that a member can change their vote is presumed throughout this section, such as in this sentence, “*The rising vote may be more effective in causing a maximum number of members to vote.*” 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.

However, *assuming arguendo*, that the above error did not exist, the process was still fatally flawed. The counted rising vote resulted in a count of 37-27 with the chair observing that “more people voted last time” (see timestamp 2:49:46) which means that everyone who voted previously did not vote in the second count as instructed. The chair noted that she might have incorrectly counted people in the back of the room during the first vote, but that is highly unlikely as explicit instructions were given to “cop a squat” (see timestamp 2:40:25) during that vote so that no illegitimate votes would be counted and this was instruction enforced by the chair. Clearly votes were changed, and the disparity is not within the reasonable margin of error for a group of this size.

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.*” Despite the fact that this was recommended to be done in two steps rather than one, the whole discussion was framed in both the floor debate and the Platform Committee report as deleting one platform (comprising many planks) and substituting with another. The bylaws are rendered absurd if one could merely bundle more than one plank to subvert this requirement obviously intended to protect the minority (and the platform itself).

## Participation by Parliamentarian

The parliamentarian improperly voted for the mass platform deletion (*see RONR page 467, lines 8-12: A member of an assembly who acts as a 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 questions except in the case of a ballot vote.*) When this point of order was raised, the parliamentarian improperly stated that this was not the case (without citing anything from RONR as justification), but there is a clear conflict of interest to have the person being challenged also being the person to advise the chair as to whether that challenge is correct. The parliamentarian later conceded the point when the passage in RONR was read aloud.<sup>iv</sup>

## Improper Motion To Adjourn

The motion to adjourn was treated as a privileged motion to adjourn, i.e. non-debatable, non-amendable, and able to interrupt a pending question. However, the motion to adjourn should have been treated in its unprivileged form as there is no allowance for a privileged motion to adjourn on the last meeting of a convention (*see RONR page 234, lines 18-21*). There were pending points of order at the time (not parliamentary inquiries as stated by the parliamentarian) and debate may have changed votes.

## Quorum Issues<sup>v</sup>

Beginning at timestamp 2:43:00 the issue of quorum was raised with the number of 69 being fixed as the quorum. 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. 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*).

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.

## IDEOLOGICAL AGENDA

When there are points of ideology at issue (rather than strictly pragmatic concerns about presentation, length, clarity, etc.) it is essential that these points be out in the open and not cloaked as mere pragmatism. At least one platform committee member 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).

## LACK OF TRANSPARENCY/AMBUSH

It is noted that although the bylaws do not require any previous notice of platform recommendations or amendments while it does for bylaws, it would have been relatively simple to provide the same notice. On the party website, the complete Bylaws Committee report is easily accessed but the Platform Committee report is not to be found and multiple members complained of ambush. For such a drastic change, it would seem that this would have been prudent. Additionally, 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.

## POWER IMBALANCE

There is a general flaw party-wide in assuming that every delegate is knowledgeable in RONR and the party bylaws (which is never the case), placing the board and committees in a superior position of power. Every attempt should be made by same to inform the delegates of their rights to reach a just result.

## THE PARTY BYLAWS REQUIRE A PLATFORM

The relevant bylaw is quoted below:

### **Bylaw 20: Platform**

#### ***Section 1***

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.

It was argued that this article does not actually *require* a platform but merely describes what it will comprise *if it exists*. Note, however, the obligatory “shall” is used rather than the permissive “may.” Without compelling external reasons, the word “shall” imposes mandatory requirements or duties.<sup>vi</sup> This intent is made clear by the second paragraph of this section which uses the permissive “may” to describe amendments and deletions. While it is possible to interpret this bylaw in the permissive manner suggested (*i.e.* a requirement only if a platform exists)<sup>vii</sup>, this is contradicted by the fact that the absence of a Platform would render the following provisions absurd and unintelligible<sup>viii</sup> (additional emphasis added):

### **Bylaw 2: Purpose (2/3 required to amend)**

The Party exists to uphold, promote, and disseminate the philosophy and principles of libertarianism. To that end, it shall proclaim and implement the Statement of Principles of the national Libertarian Party by engaging in political and informational activities in California.

The Party **shall** do so by:

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F. Preparing a statewide political environment to enhance the election of Party candidates pledged to the Statement of Principles for the singular purpose of abolishing statist law, and restoring civil and economic liberty and property rights as proclaimed in the Principles and defined in the **Platform**;

**Bylaw 10: Officers**

**Section 5**

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The Secretary shall cause the **most recently adopted Platform**, Program, and Bylaws and Convention Rules, as well as the Bylaws of all county organizations to appear on the Party website not more than thirty days after adoption.

**Bylaw 21: Program**

**Section 1**

The Party Program shall consist of up to five planks which state interim measures and practical policies, designed to implement the Party position on issues of interest to California. The Program shall not conflict with the Statement of Principles or the **Platform**.

## RELIEF REQUESTED BY PETITIONERS/APPELLANTS

In this instance, there is no action that cannot be unwound and done properly and the rights violations are numerous, clear, and grievous. The result might be the same, but surely everyone wants things done cleanly. Therefore, we the undersigned maintain that the only equitable solution is 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. Additionally, we hold that the process should be restarted with another platform committee (comprising the same or different members) operating in a transparent manner that actively seeks input and collaboration from party members.

i The 2018 bylaws are located at <https://tinyurl.com/lpcabylaws> with appended convention rules that would function as special rules of order. There is no party constitution. The current edition of *Robert's Rules of Order, Newly Revised* (RONR) is specified by Bylaw 28 to be the current parliamentary authority.

ii See RONR, page li.

iii Laws can immoral, and rules can be unjust. A prime example would be the attempted excision of parts of the Statement of Principles at the 2008 national convention during what was described as “slick parliamentary maneuvering” that blatantly went against the spirit and intent of the subject bylaws. Many persons who supported the amendments opposed the strategy on grounds of sheer intuition that this was a dirty trick, no matter what technical justifications could be mustered. This sense is compounded when there is a clear opportunity for a “clean redo.” Procedures should not be a “gotcha” and controversial decisions should be as free from the appearance of inequity as possible for the peace of the order. The 2006 national convention is another unfortunate example. The sense that things were not done fairly caused a major rift in the party that persists to this day.

iv It was noted that there was no harm done in the prior improper votes as the parliamentarian was not the deciding vote. This, however, ignores the possibility that members looked to her as a source of authority to guide their own votes. One cannot be both judge and jury.

v 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.

vi There are some court cases in which “shall” has been interpreted as interchangeable with “may” but these were under certain unique circumstances, to wit (emphasis added), “As used in statutes and similar instruments, this word is generally imperative or mandatory; but it may be construed as merely permissive or directory, (as equivalent to “may,”) to carry out the legislative intention and in cases where no right or benefit to any one depends on its being taken in the imperative sense, and **where no public or private right is impaired by its interpretation in the other sense.**”  
[<https://thelawdictionary.org/shall/>] The ideological stances of the party certainly are a matter of member rights.

Additionally, this distinction was noted in a discussion on employment contracts and notice required for termination (emphasis added): “The reason for this result is the use of the word ‘may’ in the first sentence. It is a drafting trick. In both the law and common usage, the word ‘may’ means the same as ‘may or may not.’ Its nature is ‘permissive,’ not ‘mandatory.’ It permits an action to be taken, but does not require it. It imposes no obligation whatsoever. It is synonymous with ‘is permitted to.’ It does not mean ‘is required to.’ It would be an entirely different matter if the first sentence said ‘You or the Bank SHALL end your employment relationship . . .’ or ‘You and the Bank WILL,’ or ‘You and the Bank MUST.’ ‘**Shall,’ ‘will’ and ‘must’ are not ‘permissive,’ but rather ‘mandatory’ in nature. They impose obligations, and are synonymous with ‘are required to.’**”  
[<https://skloverworkingwisdom.com/dont-be-fooled-by-the-may-shall-trick/>]

While RONR does not deal with the differences between “shall” and “may” (it is not a dictionary after all), in its discussion on content and composition of bylaws beginning on page 570 uses the word “shall” and “may” in the mandatory and permissive senses respectively.

vii If the term “shall” should be interpreted to mean what the platform will contain IF it exists, then also, for consistency’s sake Bylaw 10 (Officers) should be interpreted to describe *potential positions* with no requirements that *there actually be* any officers.

viii A reading of the entirety of the bylaws is instructive as it very carefully uses the terms “shall” and “may” to distinguish mandatory items from permissive ones.