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## Parliamentary Opinion

RE: Motion removing Secretary of the Libertarian National Committee

On June 18, 2021, at 4:32:50 PM [time zone not specified] Joseph Bishop-Henchman, the Chair of the Libertarian National Committee (LNC) submitted a motion via e-mail<sup>1</sup> to the LNC as follows:

Motion: The Libertarian National Committee hereby suspends Caryn Ann Harlos from her role of Secretary on the LNC for a pattern of repeated unprofessional behavior and conduct unbecoming of a national officer and removes her from all LNC committee appointments per Article 7.5 of the Libertarian Party's Bylaws.

On June 19, 2021, at 1:08 PM [EDT], Ms. Harlos authorize the parliamentarian to write an opinion on the procedural propriety of the stated motion.

## Works Cited

The Bylaws of the Libertarian Party are cited as "Bylaws" with the appropriate article and section numbers as needed.

Article 16 of the Bylaws states that, "The rules contained in the current edition of Robert's Rules of Order,[sic] Newly Revised 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." The current edition of that work is the 12<sup>th</sup> edition of *Robert's Rules of Order Newly Revised*, published in 2020<sup>2</sup>. It will be cited as RONR with the appropriate section citations. Any other work cited will be cited in the end notes.

## Commentary

RONR does speak to the removal of officers (62:16, pp. 618-19). It requires that, in cases where there is specific term for a trial to be held. The Bylaws (Article 6, Section 1) provide for a fixed term "until the final adjournment of the next convention." There is no "and until" or "or until" a successor is elected. If the bylaws were otherwise silent, a trial would be required to remove an officer. The Bylaws are *not* otherwise silent.

Article 6, Section 7 of the Bylaws provide that, "The National Committee may, for cause, suspend any officer by a vote of 2/3 of the entire National Committee, excepting the officer that is the subject of the vote who may not participate in that vote." Other than to note the requirement is "a vote of 2/3 of the entire National Committee, excepting the officer that is the subject of the vote who may not participate in that vote," a very high standard<sup>3</sup>, there is no other procedure listed for removing an officer. A simple clause, stating that this would be done "by motion," would have been sufficient to remove the RONR requirement; that wording, however, does not exist. All other procedural aspects of disciplinary action are therefor included in RONR. RONR effectively fills in any gaps in the bylaws.

RONR (63:5, p. 620) notes that "A member or officer has the right that allegations against his good name shall not be made except by charges brought on reasonable ground. If thus accused, he has

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the right of due process – that is informed of the charge and given time to prepare a defense, to appear and defend himself, and to be treated fairly.” What is considered to be being “treated fairly” is often times in the eye of the beholder<sup>4</sup>. The right to defend oneself, and to be informed of a charge are not. Further, they are each a “right” established for officeholders by RONR.

The word “right” is only rarely used in RONR, because adopting RONR creates very few in itself and because violating these rights may cause the action to be null and void; this is known technically as “breaches that are of a continuing nature, whereby the taken in violation of the rules is null and void (23:6, p. 236).” Some of the actions are “any action taken in violation ... of a rule protecting the basic right of an individual member (23:6e, 237). Ms. Harlos, as a member the LNC and as an officer of that body has these rights, as has every other member of the LNC. So the question is if they are being violated by this process.

The removal process, in general, is that an investigating be appointed, conduct an investigation, that charges be adopted, that the accused be notified, even if present when the charges are adopted, and a trial. If the process of using a special committee to hear the case, a fifth step is for the assembly (in this case, the LNC) to review the committee’s findings (63:7, p. 621).

Not all of these things are a basic of an individual member. The investigating committee, for example, need not be formed, as the assembly (in this case the LNC) could adopt a motion charging the member. A committee of one could be appointed to immediately report the charges; a committee of the whole could be formed to report the charges. Note that, however, until the charges are adopted, a member still retains all rights of membership. A separate motion would be needed to remove some or all of the rights of membership (except those relating to a trial) from the member charged (63:26, p. 626).

It is with the lack of specific charges that the violation of Ms. Harlos’s basic rights begins. RONR requires the accused to be notified of both the *charge*, i.e. the offense, that is alleged for guilt, and the specific wrongdoing (63:24, pp. 625-6). An example from the book shows a treasurer being charged with “neglect of duty in office,” and lists one of the specifications being that she failed to deposit \$10,000 of the organization’s funds (63:15, p. 623). Ms. Harlos is effectively charged with two different things “a pattern of repeated unprofessional behavior and conduct unbecoming of a national officer.” At no place is there even a suggestion of what she actually is accused of doing. This is the procedural equivalent of charging someone with armed robbery and not telling him who he supposedly robbed. The motion, even if worded as a charge alone, fails to adequately inform Ms. Harlos of what is what actions were found offensive by the maker of the motion. This ground, singularly, would be sufficient to render any removal null and void, but there is more.

Secondly, the charges and specifications must be sent to the accused, formally. RONR suggests that the secretary send this document out by registered mail with delivery confirmation (63:28, p. 627). This is required even if the person is present when the charges and specifications are adopted. This is supposed to be done by secretary, but, under suspension of the rules, this could be delegated to another member. Failure to give this notice, singularly, would be sufficient to render the notice null and void, but there is more.

Thirdly, a trial is required. As noted, the LNC bylaws only set the vote required to remove a member, not the method of removing them. A trial, in which the accused may present a defense and may have defense counsel, must make this decision. A motion is not a trial. Where the defendant pleads not guilty, RONR gives the member a right call witnesses (66:33d, p. 629) and requires, for a finding of guilt, for both the charge and for at least one of the underlying specifications (63:33e, pp. 630-31). There is not even the pretext that this has occurred. This, even singularly, would be sufficient to render any attempt to remove Ms. Harlos from her position as Secretary is null and void.

The parliamentarian must conclude that, even singularly, any of these grounds are sufficient to cause the motion to remove Ms. Harlos to be null and void. Collectively, they certainly do as well. The motion itself is out of order as it is null and void and should be immediately ruled out of order.

The parliamentarian anticipates some questions regarding the role of the Judicial Committee at this point in the process. The Judicial Committee serves, effectively, as a court of final review; the Bylaws actually refer to rules of “appellate procedure” for this committee (Article 8, Section 3). The LNC does not contemplate removing a member and send the matter to the Judicial Committee to make the decision, as though it was a grand jury sending an indictment for trial. The LNC makes the decision to remove someone and then, if appealed, that decision is reviewed by the Judicial Committee. The fact that the Judicial Committee may serve as an additional safeguard for an individual member’s basic rights of membership, in no way diminishes the LNC’s responsibility for safeguarding the same right and for following correct procedure. It serves as, perhaps a very well needed, additional safeguard on those rights.

### Opinion

**1. RONR governs the procedure covering removal of officers of LNC. The only variation is the process is that “a vote of 2/3 of the entire National Committee, excepting the officer that is the subject of the vote who may not participate in that vote.”**

**2. The motion that, “The Libertarian National Committee hereby suspends Caryn Ann Harlos from her role of Secretary on the LNC for a pattern of repeated unprofessional behavior and conduct unbecoming of a national officer and removes her from all LNC committee appointments...,” is null and void (and as such out of order) on the following grounds, both singularly and collectively:**

**A. Ms. Harlos’ right to be notified of the specified acts of what she has been accused, the “specifications,” was violated.**

**B. Ms. Harlos’ right to be formally notified of the charges, generally, was violated.**

**C. Ms. Harlos’s right to offer a defense, receive counsel, and call witnesses, is being violated.**

Signed:

*Jonathan M. Jacobs*

Jonathan M. Jacobs, PRP, CPP

Date:

June 19, 2021

End notes:

<sup>1</sup> Article 13 of the Bylaws permits e-mail voting, which is being conducted at the time of the writing. The parliamentarian is obviously unaware of the outcome.

<sup>2</sup> Robert, Henry M., *Robert’s Rules of Order Newly Revised*, 12th Edition. Eds. Sarah Corbin Robert, Henry M. Robert, III, William J. Evans, Daniel H. Honemann, Thomas J. Balch, Daniel E. Seabold, Shmuel Gerber, New York: Public Affairs, 2020.

<sup>3</sup> The RONR standard for removal from office is a majority vote. The Bylaws require a 2/3 vote of the entire membership, or at least 11, assuming that there are no vacancies.

<sup>4</sup> See, “A Question of Fairness,” *Parliamentary Journal*, Vol. XXXVIII, No 4, Oct., 1997, 147-155.