Libertarian National Judicial Committee

Petitioner: Tony D'Orazio and signatories

vs

Respondent: Libertarian National Committee (LNC)

Re: Joint Fundraising Committee
Request for Voidance Due to Drastically Changed Circumstances in Standing with Current Bylaws or in the Alternative, Rescission of Prior Decision

Libertarian National Committee Respondent Brief

Background

In July of 2024, petitioner Caryn Ann Harlos filed a Judicial Committee ("JC") appeal, alleging the Joint Fundraising Committee ("JFC") the Libertarian National Committee ("LNC") entered into with the Robert F. Kennedy, Jr. campaign was a violation of the LNC's bylaws. The JC ruled in favor of the LNC, and Ms. Harlos lost her appeal. Thereafter, Tony D'Orazio filed an appeal, citing "changed circumstances".

Argument

"Changed Circumstances"

It has already been well-established that the JFC is a separate and distinct entity to which the LNC and the RFK Jr. campaign are participants. The participants, being separate and distinct entities themselves, are free to manage their own affairs however they see fit. Stated a different way, none of the JFC participants have the power to direct the operations of any other participant. Furthermore, the JFC participants are bound by the bylaws of their own separate and distinct organizations respectively. As such, the RFK Jr. campaign is not bound by the LP bylaws; the LNC is. Each organization behaves uniquely, conducting its business as it sees fit.

For example, the LNC passed a unanimous resolution reaffirming full support for the Libertarian nominees Chase Oliver and Mike ter Maat in accordance with Article 14.4 of the LP bylaws. The LNC also held a fundraiser for the Oliver Ter Maat campaign at the last in person meeting.

The RFK Jr. campaign has chosen to suspend campaign operations in certain states, and RFK Jr. has endorsed Donald Trump for president. This is his business, not ours. Neither the LNC nor even the JFC have taken such action. Furthermore, the contractual terms of the JFC have not changed since the JC delivered their opinion on the previous appeal of this matter, which was well before the RFK Jr. endorsement of Trump.

Endorsements by one organization do not by some transitive property become endorsements by any other contractually related organization. If that were the case, endorsements made by the Green Party and Constitution Party would carry over to the LNC when we engaged in joint litigation or single issue coalitions. As mentioned in the previous LNC respondent brief, the LNC has joined forces with the Green Party and Constitution Party on ballot access lawsuits. The notion that any endorsements made by those parties while in cooperation with the LNC on ballot access lawsuits necessarily implies LNC endorsement is quite risible.

Mr. D'Orazio has hyperbolically claimed that the JFC is now clearly an endorsement apparatus and pass-through funding mechanism for Donald Trump, but all the evidence provided only shows that RFK Jr. himself has made an endorsement of Donald Trump. What is conveniently omitted is that RFK Jr. is leveraging his fundraising infrastructure to pay off his own campaign debt. Mr. D'Orazio's claims might be more credible if he had substantial evidence. However,

rhetoric is not evidence and Mr. D'Orazio has fallen well short of meeting his burden of proof on this matter.

Coordination

Mr. D'Orazio, like the previous appellant Ms. Harlos, grossly mischaracterizes the nature of the JFC. The JFC is an independent entity that has to be filed with the Federal Election Commission ("FEC") separately from the LNC. The LNC, JFC, and RFK Jr. campaign all have to file separately with the FEC, and FEC records are public. Anyone seeking accounting of how those funds have been used are invited to examine the relevant FEC reports. The accusation that it is the LNC that is coordinating spending is disingenuous given that without the JFC there would be no spending at all.

The JC Majority decision in Harlos v. LNC

Footnote 3

Mr. D'Orazio begins his argument by making the following claim:

> *At the time of the first appeal, RFK was a nominal Libertarian, having paid $25 and signed a pledge that he denies with nearly every policy prescription that would grow government. Contrary to the prior opinion, the fact that the prepositional phrase "to move policy in a libertarian direction" follows another prepositional phrase "to elect libertarians" does not take it "out of the realm of the Party." It is a Principle of Interpretation in RONR that "(t)here is a presumption that nothing has been placed in the bylaws without some reason for it." RONR 56:68(4). The Bylaws are the Party Bylaws - so everything in them is in the realm of the Party. If the Party were to be aware that some professed "libertarian" would theoretically move policy otherwise - something that is impossible to know without a reasonable doubt in advance - it would still be in violation to promote that candidate. However, that threshold doesn't need to be reached here.*

This is clearly a challenge to the reasoning found in footnote 3 of the prior JC majority opinion, which states:

> *Appellants have declined to allege that, by moving public policy in a contra-libertarian direction, the agreement in question also contravenes Bylaws Article 2.2, which similarly mandates that the Party implement its principles by "electing Libertarians to public office to move public policy in a libertarian direction". While it might be argued that any decision that would have the effect to move public policy opposite to a libertarian direction would logically contradict and undermine the mandate to elect candidates to move public policy toward a libertarian direction, Appellant has honorably remained true to her strongly held principle of plain meaning in bylaw interpretation, taking the position*

that the clause's prepositional phrase merely explains the purpose for the mandate to elect Libertarians to public office, rendering it inoperative with respect to the Party, itself.

The prior JC opinion did not comment on Article 2.2 except to mention in footnote 3 that the prior appellant, Ms. Harlos, takes the position that the clause's prepositional phrase merely explains the purpose for the mandate to elect Libertarians to public office. The position that the reason for the phrase "to move public policy in a libertarian direction" is to explain the purpose for "electing Libertarians to public office" satisfies the requirements of RONR 56:68(4). Furthermore, given that the wording in Article 2.2 is "to move public policy", not "and move public policy", and that the two phrases in question haven't been split into separate bylaws, it implies that the reason for the second phrase is to elucidate the first. This necessarily excludes any interpretation, such as D'Orazio's, that attempts to treat the second phrase in isolation.

Mr. D'Orazio next makes the claim:

Bylaws Article 2 is entitled "Purposes" and 2.4 states one of those purposes as: "nominating candidates for President and Vice-President of the United States, and supporting Party and affiliate party candidates for political office." One would be hard pressed to say that renting the Party name and contribution limits to EXPLICITLY endorse Donald Trump follows that.

The word "supporting" in Article 2.4 does not imply exclusive support for Party and affiliate party candidates. So long as an action can reasonably be expected to benefit Party and affiliate party candidates, such as financial support from the JFC, it is not in violation of Article 2.4 of the Bylaws. The LNC's cut from the JFC made it possible for the LNC to honor its ballot access encumbrance on Kentucky. These funds literally benefitted the Oliver Ter Maat campaign. WIthout them, the Oliver Ter Maat campaign would not be on the ballot in Kentucky.

Footnote 4

Mr. D'Orazio then continues with the claim:

The majority claim that "separate and distinct" is more restrictive than endorsement is simply not logically supported in context. The SPECIFIC is more determinative than the "general" (RONR 56:68 (3), (4), (5), (6)), the Bylaws are SPECIFIC not only in Article 2.4 about who we support but also Bylaw 14 which the prior majority opinion already conceded prohibited the national Party from endorsing (which would include co-endorsing) any Presidential candidate other than the one nominated at convention.

This is clearly a challenge to the reasoning found in footnote 4 of the prior JC majority opinion, which states:

Article 14.4 reads, "The National Committee shall respect the vote of the delegates at nominating conventions and provide full support for the Party's nominee for President

and nominee for Vice-President as long as their campaigns are conducted in accordance with the platform of the Party."

The question has arisen whether the provision in Article 5.4 of the Bylaws that "No affiliate party shall endorse any candidate who is a member of another party for public office in any partisan election." also prohibits the National Party from doing so. We do not reach that question today because the mandate to "provide full support for the Party's nominee[s]" precludes on its face endorsing anyone other than Oliver and ter Maat, in this case. Furthermore, any allegation that the agreement in question constitutes "endorsement" of Mr. Kennedy or his campaign is subsumed by the more restrictive standard mandated by the requirement in Article 2.1 that the Party remain "separate and distinct", considered and dismissed in the previous section

Mr. D'Orazio argues against the claim in footnote 4 of the JC majority opinion that "separate and distinct" is more restrictive than endorsement since endorsement is more specific than "separate and distinct" citing (RONR 56:68 (3), (4), (5), (6)). (Mr. D'Orazio does not elaborate on the relevance of RONR 56:68 (4), and (5) in this context, and any speculation in that regard would be improper). The primary issue with this argument is that, in conflating more restrictive with more specific, the application of RONR 56:68 (3) renders the application of RONR 56:68 (6) nonsensical. If endorsement is more specific than "separate and distinct", it must necessarily be a subset of actions that, if taken, violate "separate and distinct" and give the endorsement bylaw greater authority per RONR 56:68 (3). However, if more specific means more restrictive, then a prohibition on endorsement is greater than a prohibition on violating "separate and distinct". This yields the logical conclusion that any action that would violate "separate and distinct", up to and including the complete dissolution of the party, so long as it is not an endorsement of a candidate, would be permissible per RONR 56:68 (6).

The problem is that more specific only implies more restrictive with regards to permission, not prohibition. For example, permission to endorse a non-party candidate is more restrictive than permission to do anything that violates "separate and distinct", being a specific subset of actions that violates "separate and distinct". However, a specific prohibition is less restrictive than a general prohibition. As such, a prohibition on violating "separate and distinct" is more restrictive than a prohibition on endorsement.

Recourse for those who disagree with JC Majority Opinion in Harlos v. LNC

Mr. D'Orazio concludes his argument by stating that it is patently obvious that the JFC violates the bylaws and that some wish the party to have a different purpose. He then kindly offers that the recourse of such people is to amend the bylaws. To the contrary, the delegates only a few short months ago had the opportunity at the national convention in DC to amend the bylaws however they saw fit, including explicit prohibitions on joint fundraising activities. Instead, they chose to amend the proposed agenda to handle matters they saw to be more pressing, as is their prerogative. In doing so the delegates de facto affirmed the bylaws as they currently stand. The JC majority opinion in Harlos v. LNC correctly interpreted the bylaws as they currently stand. The fact is that a majority of the delegates, LNC, and JC have spoken on this

matter and they have sided with the LNC. As such, the fact at hand is that it is incumbent upon those who disagree with that majority to amend the bylaws.

Procedural Matters

Mr. D'Orazio in his requested procedural relief and postscript aired grievances about how the JC hearing was handled in Harlos v. LNC, and then further about the stance taken by the JC majority regarding the role of the JC. With regards to the JC hearing, both sides were allowed to make their case, and then were subject to questioning by the JC. At no point did either party request an extended or supplementary hearing to call witnesses, and whether or not this was intended or an oversight is pure speculation. As for the postscript, the JC is a purely appellate body with a specifically defined subject matter jurisdiction per Article 8.2 of the bylaws. To characterize JC activities that fall well within their purview as a "rubber-stamp" does a disservice to the members of the JC. At no point in the JC majority opinion did anyone suggest that LNC decisions were beyond scrutiny, merely that JC scrutiny is limited to determinations as to whether an LNC decision is or is not in violation of the bylaws. Mr. D'Orazio is correct in his claim that the JC serves as a critical check and balance on the organizational structure of the party. The LNC makes policy decisions, and the JC determines whether or not those decisions violate the bylaws based on their best judgment with respect to the bylaws and the arguments presented, not with respect to their own personal opinions on the policy decision. For the JC to substitute their own personal opinions on the policy decision would be a quintessential act of hubris.

Precedential Implications

Finally, the JFC has already been in operation for months. Any ruling that terminates LNC participation in the JFC will cause reputational damage to the LP, and to the several state affiliate parties that have already signed up, and the additional parties waiting to sign onto the agreement. As previously argued, such a decision will create the perception that the LP is a capricious organization that can't be trusted to fulfill its contractual obligations. This will be detrimental to the LNC, and make it more difficult to negotiate with banks, event venues, and other political organizations in the future. Furthermore, absent evidence that the LNC itself has engaged in impropriety that rises to the level of a bylaws violation, any reversal by the JC would set a precedent that incentivizes serial relitigation as a legitimate tactic for overturning LNC decisions.

Conclusion

The LNC respectfully asks the JC to deny Mr. D'Orazio's claim and to decline to hear further appeals on this matter. This controversy has already been decided, and there are other pressing issues for the LNC to focus on right now, such as elections and voter outreach.