

Opinion by J. Robert Latham

Summary:

The Libertarian National Committee (“LNC”) voted to amend its policy manual on October 6th, 2024. Appellants appealed the amendment. The undersigned judicial committee member would hold that the challenged amendment to the LNC’s policy manual does not contravene any section of the current Party bylaws.

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The undersigned is grateful for this appeal by petitioners Honor “Mimi” Robson *et al* (“**Robson**”) because it provides an opportunity to opine on whether the policy enacted by the LNC contravenes the Libertarian Party’s current Bylaws. The undersigned viewed this good faith dispute as almost a “coin flip,” but ultimately found the argument on this issue by [amicus and LNC region representative Andrew Chadderdon](#) most persuasive. The undersigned wonders whether more members of this judicial committee would have been similarly persuaded had the LNC submitted a response by the seven-day deadline and/or Mr. Chadderdon had submitted his amicus sooner than the day before the February 22<sup>nd</sup>, 2025 hearing of Ms. Robson’s petition.

### **DISCUSSION**

[Robson’s petition](#) requested the following remedies:

- A voiding of the decision of the LNC to take all business off the public list, including the actual debate and actual votes, with the exception of discussion of items that qualify for Executive Session or that cannot meaningfully be considered “business.”

- A voiding of the decision of the LNC to delete the immediately prior LNC Business list, and if they retained a copy in archive form that it be restored, or if not possible, turned over to the Historical Preservation Committee for members to obtain via a link a [sic] LPedia.

Robson petition, at 6. The undersigned understands that the second remedy requested was rendered moot by the LNC's February 27, 2025 decision to restore its read-only business email list.<sup>1</sup>

The undersigned views part of the problem as arising from the LNC's combination of the use of an electronic email business list for balloting pursuant to Article 13 of the bylaws with the use of that same electronic email business list to also engage in debate/discussion. These may not be two great tastes that taste great together. By inextricably intertwining electronic voting with debate/discussion in its email activity, however, the LNC may have obligated itself to post all that content to any read-only public email list that the LNC created and provided pursuant to Article 7.14 of the bylaws.

Yet for the purpose of deciding whether electronic mail ballots equate to "meetings" or "sessions," the undersigned is persuaded that "votes" (Article 7.14) are not debate/discussion, nor are "votes and actions" (Article 7.15) debate/discussion either. In discussing rules relating to the secrecy of an executive session, the Party's parliamentary authority states that "***action taken, as distinct from***

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<sup>1</sup> "Motion: To direct staff to make publicly viewable the former contents of LNC public email list that was kept at <https://groups.google.com/g/lnc-business-list-public> through the time at which ballot 20241006-12 was adopted and the relevant changes were enacted according to the policy manual changes included in that ballot." See <https://docs.google.com/spreadsheets/d/1OMLmOstNc1IE2fMrdfZxFVwaz29jzhmn/edit?gid=973441466#gid=973441466> (last accessed March 7, 2025).

*that which was said in debate*, may be divulged to the extent -- and only to the extent -- necessary to carry it out.” RONR 9:26 (emphasis supplied). The undersigned interprets this language and other indicators from the Party’s parliamentary authority to mean that debate/discussion may be separated from action/votes/business, although the undersigned hastens to add that reasonable parliamentarians appear to disagree on this point.<sup>2</sup> As my colleague [Mr. Tarnoff writes in his opinion on this appeal](#), “Article 13 does clearly empower the LNC to do **business** in an alternative way” (emphasis supplied). Thus, the undersigned does not view it as incongruent to read the current bylaws as authorizing the LNC to transact business by electronic email pursuant to Article 13 without constituting the type of “open session” contemplated by Article 7.14-7.15, which is another track by which the LNC may conduct its business.

Moreover, the Party’s parliamentary authority distinguishes between 1) a bylaws authorization for electronic email balloting/voting and 2) a bylaws authorization for electronic meetings. *Compare Robert’s Rules of Order, Newly Revised* (12th ed.) 9:35 (“As in the case of a board or any assembly, committees that are expressly established by the bylaws can hold a valid electronic meeting *only if authorized in the bylaws* to do so.”) (emphasis supplied) and 45:56 (absentee/electronic voting):

It is a fundamental principle of parliamentary law that the right to vote is limited to the members of an organization who are

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<sup>2</sup> See <https://youtu.be/nC2qoSul5iU?feature=shared&t=3738> (discussing in both the hearing and the chat whether certain LNC actions are confidential and whether “debate” constitutes “action”).

actually present at the time the vote is taken in a regular or properly called *meeting*, although it should be noted that a member need not be present when the question is put.

***Exceptions to this rule must be expressly stated in the bylaws.*** Such possible exceptions include: (a) *voting by* postal mail, *e-mail*, or fax, and (b) proxy voting.

(emphasis supplied).

The Party bylaws expressly authorize electronic voting through the enactment of Article 13 and expressly authorize electronic meetings through the enactment of Article 12. Yet because electronic email ballots do not “provide, at a minimum, conditions of opportunity for simultaneous aural communication among all participating members equivalent to those of *meetings* held in one room or area[,]” RONR (12<sup>th</sup>) 9:31 (emphasis supplied), the LNC’s email business list cannot constitute an “electronic meeting” or its plural: an “electronic session.” *See also* RONR 1:1 n.1 and 9:34 (“a group that attempts to conduct the deliberative process in writing (such as by postal mail, e-mail, ‘chat rooms,’ or fax)—which is not recommended—does not constitute a deliberative assembly”).

The undersigned is also of the view that although Article 7.14 of the bylaws provides that “[a]ny person may ... subscribe to a read-only email list on which National Committee votes are recorded[,]” the current bylaws do not *require* the LNC to record votes by email or create a concomitant obligation to provide such a read-only email list.<sup>3</sup>

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<sup>3</sup> Although the undersigned does not recommend that the LNC adopt this practice, it could record votes by telephone or text message, for example, to evade the disclosure requirement in the current Party bylaws for emailed votes. *See, e.g., “It’s against our policy’: Metro Sheriff speaks on officers’ use of disappearing messages app,”* KTNV, Nov 26, 2024 and last updated 5:24 PM, Nov 27, 2024 (last accessed

However, to the extent that the LNC does record votes by email, Article 7.14 does obligate the LNC to provide a read-only email list “on which National Committee votes are recorded.”

As an aside, this judicial committee is not obligated to make its deliberations public, although any of its members are at liberty to publicize the committee’s deliberations. *See* Rule 7.4 of the Judicial Committee Rules of Appellate Procedure. Accordingly, any claim that this committee’s disposition of Robson’s petition takes a principled stand for transparency should be viewed askance.

And for what it is worth, the resolution of this petition provides an opportunity to discuss curative measures. Although the undersigned leans toward the view that the current bylaws authorize the LNC to withhold debate/discussion, votes, or actions conducted via email from the public, the bylaws could be amended to expressly authorize the LNC to calibrate the amount of email activity it may make public. Alternatively, the bylaws could be amended to expressly require the LNC to make public votes and actions conducted via email, but withhold debate/discussion via email. Or the bylaws could be amended to require that all the LNC’s business emails be made public.

Furthermore, Party members should consider amending the bylaws in a way that facilitates participation on the LNC by a broader range of Party members. The 2024 Bylaws and Rules Committee, on

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March 7, 2025); [“Oklahoma officials’ use of encrypted messaging app raises concerns over Open Records Act,”](#) KOKH-Fox 25 Nov 6, 2023 (last accessed March 7, 2025); [“Missing Jan. 6th texts due to Signal, personal phone use,”](#) Citizens for Responsibility & Ethics in Washington, March 3, 2023 (last accessed March 7, 2025).

which the undersigned served, unanimously recommended [Proposal RR](#), which would expand the number of members-at-large to better approximate proportional representation of convention delegate preferences on the LNC. [Proposal SS](#), which passed the 2024 Bylaws and Rules Committee without objection, would replace approval voting for member-at-large and judicial committee elections with a semi-proportional electoral method outlined in our parliamentary authority called “cumulative voting.” Making these changes to the Party bylaws could alleviate legitimate concerns that sufficient checks, oversight, and/or perspectives are being excluded from non-transparent LNC debates/discussions.

In liberty,

*/s/ J. Robert Latham*

Disclaimer: This document is intended to analyze the Party bylaws in the context of a petition appealing a decision of the Libertarian National Committee, and is not intended as a legal opinion on any matter.