

APPEAL TO THE NATIONAL LIBERTARIAN PARTY JUDICIAL COMMITTEE (JC)

RE: CONDUCTING OF ELECTRONIC LNC BUSINESS IN SECRET AND DELETION OF PAST LNC BUSINESS LIST

Appellant: Mimi Robson on behalf of signatories to appeal

Appellee: Libertarian National Committee (LNC)

Date: January 10, 2025

Jurisdiction: LP Bylaws Articles 7.12 and 8.2

Bylaws Alleged to be Violated: Articles 7:14, 7:15, 13, and 16 (incorporating RONR)

Relevant RONR Provisions: Will be cited throughout as needed

Interested Parties: LNC and every national Libertarian Party Member

1. DECISION APPEALED

The overt and/or constructive decisions of the LNC that:

- A. Deleted, or rendered otherwise inaccessible, the past LNC business list.
- B. Moved all business and actions of the LNC with the exception of the announcement of an email ballot and its results behind a wall of secrecy.

These actions were put into effect as a result of the following Policy Manual amendments found here:

 2024 Motions and Ballots <http://tinyurl.com/LNCVotes2024> .xlsx

Which deleted the "Open Emails" section of the Policy Manual and excluded debate from electronic ballots. Subsequently, without a public vote, the public email list from approximately February 21, 2024 through approximately some point in October 2024, via either a secret or constructive decision of the LNC or the LNC through its Chair was deleted or otherwise made unavailable to the membership (see link here: <https://groups.google.com/access-error?continue=https://groups.google.com/g/lnc-business-list-public>)

2. CONSTRUCTIVE DECISIONS ARE APPEALABLE

The Judicial Committee has long recognized that decisions made without a formal vote that have a certain effect should be treated the same as if a formal vote were taken otherwise the LNC could simply conduct violative actions by purposefully avoiding a formal vote and thereby leave members without having their right to appeal under the

Bylaws. While this recognition has been in the context of “constructive disaffiliation” of affiliates, the same principle should apply to other actions of the LNC.¹

3. HISTORY OF BYLAWS ON THIS ISSUE

When the Party was formed, there was no such thing as electronic mail, and any voting that was required between meetings was done by postal mail. The potential use of electronic mail first appeared in the Bylaws in 1989, but then it was one of multiple options. The idea of a public email list was first introduced in the 2012 Bylaws and stated that only votes needed to be public:

LP Bylaws (2012) 8:15

The Secretary or a designee shall promptly post notice for each session of the National Committee; any National Committee proposed agendas; and approved minutes of each Convention and open National Committee session to a permanent archive section on the Party’s website. Any person may record the National Committee’s proceedings while in open session, or subscribe to a read-only email list on which LNC votes are recorded.

However, those same Bylaws did not have any limitations on Executive Session and thus no requirement that any debate or discussion of anything had to be in open session; only that if the LNC were in open session, that any person may record the proceedings. Due to this language, and the difficulties in strictly applying RONR to electronic “deliberations,” there was a separate list in which only votes were recorded (along with notices and some stray discussion)² as the LNC is attempting (but failing even in this circumstance) to do today. How are they failing? They **are not even recording the votes but merely announcing a ballot and then the results**. Even in that limited scope, that provision *has never been interpreted that way. Ever*. If we were still dealing with just the bare bones 2012 Bylaws provision the votes themselves, by the individual LNC members, must be cast in that thread. The LNC may reply that a spreadsheet is linked in the ballot, but first, that is not what even the 2012 bylaw says, the votes themselves must be recorded in the email chain, but seeing that chart requires the viewer to have a Microsoft account.³ That is an utter fail as far as transparently recording votes in real times goes. Further, as you can see by perusing

¹ For example *Wagner v. LNC (2011)*, and the combined cases of *McVay v. LNC/Hines v. LNC (2022)*.


² See <https://hq.lp.org/pipermail/lnc-business/2012/thread.html> and <http://hq.lp.org/pipermail/lnc-business/2013/thread.html>

³ As an aside, the same holds true for the “truncated” minutes policy put into place while the legitimate Secretary was absent. All of the reports that members should have a right to see that are linked in these minutes are locked beyond a Microsoft entry wall.

the links in the footnote, debate was also conducted, at least in a limited way by some, because *debating is an intrinsic part of the deliberative process that terminates with voting.*

In reading a Bylaw one must ask its context and purpose. It is apparent that this was added for transparency purposes. Does announcing votes after the fact really satisfy that purpose? No. There is no chance for members to see the reasoning of their representatives, and with time to attempt to lobby them to change their mind or point out flaws in their reasoning. They cannot see when an LNC member asks for sponsors and lobby for others to join them or see a few standing alone on a motion to decide if they are principled or merely trouble-makers. Members might be wondering if any LNC member objected to a certain action and sought to overturn but never received any support. With the obvious retaliatory behavior of the LNC, such lone dissidents might fear saying they did so in another venue or risk a threat of removal.

But we are not dealing with the bare-bones 2012 Bylaws requirements even though this LNC would be in violation as neither the votes nor debate is recorded. It becomes more clear as we move to the 2020 Bylaws in which limitations on secret “Executive Session” topics were permanently codified (only having been in the Policy Manual before and much broader as explained in the January 6, 2024 Kosin appeal here:

 [Petition Appeal PM Changes.pdf](#)) along with this additional language (emphasis added):

LP Bylaws (2020) 7:14-15

14. The Secretary or a designee shall promptly post notice for each session of the National Committee; any National Committee proposed agendas; and approved minutes of each convention and open National Committee session to a permanent archive section on the Party’s website. Any person may record the National Committee’s proceedings while in open session, or subscribe to a read-only email list on which National Committee votes are recorded.

*15. The National Committee and all of its committees shall conduct all votes **and actions** in open session; executive session may only be used for discussion of personnel matters, contractual negotiations, pending or potential litigation, or political strategy requiring confidentiality.*

This language remains unchanged today. At that time, in fact since the time that Nick Sarwark served his first term as Party Chair, all full LNC discussions were public with the exception of the broader list of the Executive Session items listed in the Policy Manual. The delegates at convention would reasonably have seen this as codifying

that practice in addition to narrowing what could be secret. The boundaries of what could be kept secret would be a paper tiger if the LNC simply chose not to discuss things they wished to keep from the membership that did not qualify for Executive Session under the Bylaws in an actual meeting but instead confined to email. That would be a blatant end-run around the clear intent of the Bylaws and the reasonable expectation of the delegates at that time, as that had been the practice of the LNC since 2014.

There is also the addition of that interesting phrase “and actions.” That cannot simply be “votes” as will be discussed below as votes were already mentioned. It can include votes but it includes so much more — in fact, it can only logically include anything involving the full LNC that can be considered business that does not fall under the categories allowed for secrecy. This is the only interpretation that honors the fullness of the Bylaws.

The word action appears in other places as well in the 2020 Bylaws and Convention Rules:

- Referring to a decision to meet whether by vote or not (Bylaw 7:9)
- Referring to the whole process by which the Judicial Committee takes on a case through completion (Rules 5:7, 6:2, JC Rules 1, 2, and 6)
- Referring to activities of state affiliates that are violative of the Statement of Principles⁴ (Bylaw 5:4)

The DC Non-Profit Corporation Code also provides guidance (emphasis added).

§ 29–413.01. Corporate records.

(a) A nonprofit corporation shall keep as permanent records minutes of all meetings of its members, board of directors, and any designated body, *a record of all actions taken by the members, board of directors, or members of a designated body without a meeting*, and a record of all actions taken by a committee of the board of directors or a designated body on behalf of the corporation.

Actions here cannot refer simply to votes as these are done **without a meeting** and one cannot import into this context that it is talking merely about things such as email ballots which do not apply to every organization and may be considered a meeting by others which have adopted Special Rules of Orders to that effect or a different parliamentary authority.

⁴ In that particular case it would be ludicrous to claim that only referred to votes of the state affiliate but other activities like their Chair advocating laws that would infringe upon individual rights would be just fine.

4. ARGUMENT ON SECRET ACTIONS OF LNC

As can be seen by the recounting of the Bylaws history above, the current complete opacity of this LNC clearly runs afoul. Even if every single casual discussion does not have to be public, the difficulties in parsing that out seem to require so if the whole LNC is involved in the discussion, and not involving the whole LNC in any discussion that might lead to a vote or an action of the LNC risks running afoul of fiduciary duties unless excepted by one of the categories allowable under Executive Session.

This is how the LNC list has been treated even before the 2020 Bylaws change, going back to 2014, and the way it should remain. How can the membership meaningfully appeal decisions if they don't know what they are all if they were done without a formal vote? How can they decide not to appeal by being persuaded by the arguments in debate? This whole situation is ripe for abuse and is an abrogation of member rights to hold its representatives accountable.

I would also note that this actions' primary proponent Mr. Andrew Chadderdon "sold it" by saying email votes should be for relatively minor things and discouraged, with important votes being saved for meetings. But we have already seen that is not the case by the current appeal of Kosin.

A. The Bylaws Require That All Meetings be Open with Limited Exception

It is a fact that between electronic or in-person meetings, that "business" is done and decisions are made between official meetings. Business is the purpose of meetings, make these interim discussions effectively meetings in function. These discussions then certainly must be open. Relying upon a technical definition of meeting, rather than the context of the bylaw that would harmonize with the requirement that the email list contain all "votes **and actions**" of the LNC would violate the RONR rules of interpretation that Bylaws should always be attempted to harmonize with each other (RONR 56:68).

B. "Actions" is a Broad Category that Must Include More than Votes

Prior to 2020, the Bylaws only required "votes" to be on an open email list yet since 2014, the LNC's interpretation and practice was to put all LNC discussions on said list with the exception of "executive session discussions." Why? Greater transparency surely, but it is also certainly plausible and logical that a vote is not merely the terminus "yes" or "no" but the whole process leading up to that point beginning with potential

discussion, a request for sponsors (and doing that in secret deprives members of urging their representatives to sponsor), the debate, and then the vote. That is a whole chain of events that cannot be divorced if “open session” and “executive session” is to have any meaning when conducting business in this manner. But to add weight to this argument, the word “actions” was added which must mean **more than mere votes** as that was already in the bylaws making such an addition profoundly superfluous.

For example:

Is sponsoring a motion an action? Most certainly.

Is asking for sponsors an action? Yes.

Is asking the Chair for clarification on a question posed by membership an action? Of course.

To reduce this down to its basic question, is anything discussed by the LNC an action? What is discussion if it is not an action? The consistent logical interpretation of that bylaw is that anything involving the business of the Party that does not qualify as executive session is subject to transparency whether at an official meeting or over email.

6. ARGUMENT ON DELETION OF PAST LNC BUSINESS LIST

The LNC took no formal vote nor had any right to memory-hole the past history done under the rules at the time. If the JC finds the argument unpersuasive about future discussions, it should at least require that the past remain unmolested. Members have a right to expect that the records of their Party that they relied upon for information and future reference not be arbitrarily destroyed. How far back can this go? Can the LNC just arbitrarily go back and destroy decades of other archives of correspondences?

7. REMEDY REQUESTED

- 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 LPedia.

8. RECOMMENDATIONS REQUESTED

Like Ms. Kosin, I do not believe it is the role of the JC to make recommendations for changes, but I respect that the JC does not agree, so I respectfully request that a recommendation be made that if the convention delegates wish to safeguard transparency without question that the Bylaws be made even more explicit and clear up any ambiguity in the word “actions.”

POSTSCRIPT:

Sincerely,
Mimi Robson