

3/5/25

(Note: for reference throughout this opinion, Bylaws Articles and Sections and Clauses will be listed as "Article-Section-Clause", e.g., Article 8 Section 2 subsection d is "8-2-d". Also all references to Robert's Rules of Order, Newly Revised, will be listed by the section and subsection number as given in the 12th Edition, e.g., Section 56 subsection 68 is "56:68", with further subsections in parentheses. All dates are in 2024.)

In the case of RE: CONDUCTING OF ELECTRONIC LNC BUSINESS IN SECRET AND DELETION OF PAST LNC BUSINESS LIST (aka Robson v. LNC), Mr. Seebeck delivers the following opinion.

1. BLUF: Proceedings and actions of the Libertarian Party, its committees, conventions, meetings, and other activities, with very limited exceptions, should be conducted in as transparent of a manner as possible to respect the rights of the membership to be aware of Party activities, in accordance with Article 7, Section 15 of the Bylaws. However, because the LNC has moved to restore the business list and archive to its public state as much as the system will allow, the appeal becomes partially moot.

Standing

2. Petitioners have provided over the required 10% of 937 credentialed delegates (94). Signature threshold has been met in accordance with 7-12. Standing has been established. This group is collectively referred to here as the "Petitioners." The LNC is referred to here as the "Respondent."

Requested Relief

3. Petitioners have requested the following reliefs (here placed in a list for clarity):
1. 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."
 2. 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 at LPedia.org.

Jurisdiction

4. While 7-12 allows member or delegate petitions of LNC decisions, once the petition is submitted and determined to be valid per the Judicial Committee Rules, the Judicial Committee shall consider it. That consideration requires the Judicial Committee to determine "whether or not a decision of the National Committee contravenes specified sections of the bylaws" (which includes all of RONR where not overridden per Bylaw 16). If a decision is vetoed by the Judicial Committee, the result is a reversion to the status quo as if the decision was never made: an affirmative decision does not become a negative decision, nor does a negative decision become an affirmative decision, but either if vetoed results in the prior state before the decision was

considered or implemented.

5. It is not enough to say a decision was just procedurally sound under the assembly's rules, but the effects of the decision itself must also not violate the Bylaws.¹ That is what is appealed here.

6. As is the case for all petitions to the Judicial Committee, it is necessary to examine if the Judicial Committee has subject matter jurisdiction to rule on each of these requests.

7. The jurisdiction of the Judicial Committee to certain matters is explicitly listed and limited by 8-2. The relevant part, subsection d, is *“voiding of National Committee decisions,”* referencing 7-12, which is the member or delegate petition thresholds, and also specifically states that the consideration is of *“the question of whether or not a decision of the National Committee contravenes specified sections of the bylaws.”*

8. The first requested relief is to void the LNC decision to delete the “Open emails” of the Policy Manual and exclude debate from electronic ballots on the business list. Since this was a decision made by vote of the LNC, the Judicial Committee has jurisdiction under 8-2-d to decide this issue.

9. The second requested relief is to void the decision to delete the entries in the public email list from 2/21/24 through 10/24. The origin of this decision is unclear, but since the public email list is under the administrative control of the LNC, it is readily concludable that it was a decision made by the LNC either constructively as an effect of the vote mentioned in the first requested relief, or by an unknown vote. If the latter, the Judicial Committee has jurisdiction under 8-2-d to decide that issue.

10. However, a constructive action without a vote is a different issue. While prior cases before the Judicial Committee have dealt with constructive actions by the LNC, specifically the constructive disaffiliations of a state affiliate,² it has not dealt with a constructive action of this nature. However, as petitioner points out, the principle of action is the same even as the results of the actions differ. Because past Judicial Committees have addressed these constructive actions, although precedent is only advisory and not binding upon this Judicial Committee, the combination of the principle and precedent makes a constructive action fall under Judicial Committee jurisdiction under 8-2-d. “Decisions” under 8-2-d are not limited to mere votes. If it

¹ 10:26-1: *“No main motion is in order that conflicts with the corporate charter, constitution, or Bylaws... and to the extent that procedural rules applicable to the organization or assembly are prescribed by federal, state, or local law, no main motion is in order that conflicts with such rules.”*

² See https://mywikis-wiki-media.s3.us-central-1.amazonaws.com/lpedia/2022_02_13_JC_Ruling_McVay_Hinds_v_LNC.pdf

were, the Bylaws in 8-2-d as well as 7-12 would say the more specific term “votes” and not the broader term “decisions.”^{3 4}

11. Also however, since this appeal was filed and while it was being considered, the LNC has moved to rescind that decision, constructive or not, and to restore the email list and archive to public viewability, as much as the system software will permit. As such, this second requested relief is **moot**.

Jurisdiction Summary

12. Because such a petition was properly made under 8-2-d, the Judicial Committee has jurisdiction in this case.

Opinion

13. Should the actions of the LNC be overturned? Yes.

14. Bylaw 7-15 requires **all votes and actions** to be in **open** session, with limited exceptions for Executive Session that are listed there.⁵ This does include the actions of debate on motions and

³ 56:68-2: “When a provision of the bylaws is susceptible to two meanings, one of which conflicts with or renders absurd another bylaw provision, and the other meaning does not, the latter must be taken as the true meaning.

56:68-4: “If the bylaws authorize certain things specifically, other things of the same class are thereby prohibited.”

⁴ It should be noted that RONR treats “decisions” as requiring motions, which require votes, but not all actions of a society require those types of decisions. The motion process is an action itself as well, including debate and subsidiary motions such as to amend. But while all motions are actions, not all actions are motions. RONR interchanges “actions” and “decisions” throughout all of its pages, as well as “motion” and “question.”

⁵ It should be noted, as pointed out by Mr. Richard Brown, PRP, in the hearing chat, that “open session” and “executive session” as given in 7-15 (and 9:24) are NOT the same as a RONR “session” as defined at 1:3 (“A session may be loosely described as a single complete course of an assembly’s engagement in the conduct of business, and may consist of one or more meetings.”) or 8:1 (“the complete unit of engagement in proceedings by the assembly is a session, which (in the general case covering all types of assemblies) consists of one or more connected meetings.”) or 8:2-2 (“A session of an assembly, unless otherwise defined by the bylaws or governing rules of the particular organization or body, is a meeting or series of connected meetings devoted to a single order of business, program, agenda, or announced purpose, in which—when there is more than one meeting—each succeeding meeting is scheduled with a view to continuing business at the point where it was left off at the previous meeting.”) A back-and-forth in the hearing led to the proposition that if the email list is not a session, then business could not be conducted via email, which contradicts Article 13, which explicitly authorizes it. **But is Article 13 business to be considered a RONR “session?”** The problem is that the three definitions of “session” in RONR conflict: 1:3 allows a session to be more than meetings, while 8:1 refers indirectly to a session to be more than meetings with its language regarding “complete unit of engagement in proceedings” (which includes debate), while 8:2-2 says it is only meetings. Given the conflict, it is readily apparent that if business can be conducted by email as Article 13 authorizes, then that business includes, as mentioned above “votes and actions,” and then the definition of “session” as given in 8:2-2 cannot apply to Article 13 business, but either of the definitions of “session” in 1:3 or 8:1 can apply. Because Article 13 explicitly references “votes and actions,” and because 56:68-2 applies to keep the Bylaws and Rules consistent and not absurd relative to each other, if a definition of a RONR “session” is to be

nonvote constructive actions, as well as sponsoring emails and side discussions regarding motions and Party business. The separation of votes from actions in 7-15 was made in 2020 when that Policy Manual rule was elevated to a Bylaw in the nature of a rule of order. (see 2:14)⁶

15. The LNC has been going around this requirement with secret lists and off-list communiques for decades. That doesn't make it right. In fact, it is a bad practice that should end. Secret lists cause secret leaks that undermines both the integrity of the LNC and membership confidence in it. If the LNC Members aren't willing to be public with their discussions, then they shouldn't be on the LNC, and are better off in the smoke-filled backrooms of the Democrats and Republicans.

16. DC Code also requires actions to be kept in a record.⁷

17. Members have every right to inspect and peruse those records. It's a right of membership.⁸

18. Opacity hides accountability of the LNC to the membership, to whom they answer. It violates member rights. It also hinders good governance when it happens because the membership has no idea of what is going on in Party administration, which opens up pathways for bad behavior, avoidable mistakes, legal liability, jumping to incorrect conclusions, infighting, and other unproductive and destructive actions. The "why" surrounding the "what" of Party business matters just as much as the "who," "where," "when," and "how." **"Fight Club Rules" do not apply to the LNC; the Bylaws prohibit it.**

19. Actions are more than just votes, because **actions encompass the deliberative nature of**

applied to Article 13 business, then it should be from either 1:3 or 8:1. So, yes, Article 13 business **can** be considered to be a RONR "session." But whether or not Article 13 business is a RONR "session" or not really has no relevance to the case. Simply put, 7-15 requires open session for all votes and actions, meaning open to members, regardless of whether the votes and actions are in a meeting or by email, except for certain explicit cases, in which executive session applies, meaning only open to relevant parties. **Both open session and executive session can and do happen in the course of a meeting, which is within a RONR "session" as defined by RONR in all three cases, so they are clearly different than a RONR "session",** as Mr. Brown pointed out. See also 9:24, below.

⁶ 2:14: *"The term rules of order refers to written rules of parliamentary procedure formally adopted by an assembly or an organization. Such rules relate to the orderly transaction of business in meetings,..."*

⁷ 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."* (emphasis added)

⁸ 47:33-4: *"Duties of the secretary. The duties of the secretary are: ...To make the minutes and records available to members upon request (see 47:36)."*

47:36: *"Any member has a right to examine these reports and the record book(s)..."*

the assembly surrounding the vote, as well as implementation of the results of the vote.^{9 10 11}

20. Decisions are by definition actions and so are constructive decisions made without a vote.

21. The LNC is attempting to strictly apply 7-14's language regarding *"read-only email list on which National Committee votes are recorded"* to mean ONLY those votes, but that is neither the purpose of the list nor the language of the Bylaw. The email list is not limited to just votes; it only states that the votes are recorded there. 56:68-4 makes the use of language in Bylaws clear: *"There is a presumption that nothing has been placed in the bylaws without some reason for it."* As has been stated before, the inverse is also true: There is a presumption that something has NOT been placed in the bylaws without some reason for not doing so. The omission of "only" here removes limitation of what goes on the email list, which naturally includes emails and email threads of discussions, sponsorship, and debate *as part of the deliberative process and vote itself*. Bylaw 7-14 does not authorize votes to be on the list at the expense of everything else, just that it is a specific example of one thing that goes on the broader list. But it's not the only thing, either.¹²

22. As appellant correctly argues, removal of discussion and votes from the public email list effectively places LNC deliberations into Executive Session, without formally doing so as required by motion¹³ and the Bylaws. And therein lies the problem: the *effect* of doing so violates the Bylaws, so it cannot stand.¹⁴ Bylaw 7-15 limits Executive Session to specific things and has done so since the Delegates codified that section in 2020. 56:68-4 states: *"If the bylaws authorize certain things specifically, other things of the same class are thereby prohibited."* **7-15 lays out the specific and limited items of business for Executive Session, and anything beyond that is prohibited from Executive Session and must therefore be in open session.** Yet the removal of debate and discussion from the public email list, as well as removing the past

⁹ 3:22 backs this up: *"A motion is a formal proposal by a member, in a meeting, that the assembly take certain action. **The proposed action may be of a substantive nature**, or it may express a certain view or direct that a particular investigation be conducted and the findings be reported to the assembly for possible further action, or the like."* (emphasis added)

¹⁰ So does 4:4: *"The member then makes his motion, in simple cases by saying, "I move that...[announcing what he proposes in a wording intended to become the assembly's official statement of the **action** taken]."*" (emphasis added)

¹¹ So does 4:64: *"As also stated above, the consideration of a main motion can involve a number of other procedures not yet described—which are nevertheless in the nature of **action** by the assembly and are themselves properly the subject of motions."* (emphasis added)

¹² As the amicus of Van Alstine correctly points out, deletion of the archive violates 7-14 because it removes the required permanence of the archive.

¹³ 9:24: *"An executive session in general parliamentary usage has come to mean any meeting of a deliberative assembly, or a portion of a meeting, at which the proceedings are secret."*

¹⁴ See 10:26-1, above.

archive of the list¹⁵, has the effect of moving both constructively into an Executive Session state, which is prohibited by the Bylaws.

23. In effect, this is a simple case: the LNC moved its deliberation and debate and records into a state of Executive Session secrecy that it is not allowed to do so, per the Bylaws, and as a result, the decisions to do so are null and void, and the implementations of those actions must not only be reversed with full restoration of the past public email list to public viewability, but all actions taken since then that would go on that list also must be restored to the public state on that list.

24. If the LNC wishes to make all of its proceedings secret, then it needs the Delegates to amend the Bylaws at a National Convention to authorize it, as was done only in part in 2020, and not done by its own accord.

25. The Policy Manual amendments which preceded these actions was not appealed, so we do not address them here, except to advise that it is best for the LNC to repeal them and revert them back to their previous form.

¹⁵ See above.