Brittany Kosin, Appellant

v.

Libertarian National Committee, Respondent

Filed: January 6, 2025

Decided: February 27, 2025

Opinion by Blay Tarnoff

On December 29, 2024, Libertarian National Committee (LNC) Secretary *pro tem* Adrian F Malagon, per movant Chair Angela McArdle, issued the following motion to amend something previously adopted, *viz.* Section 1.01 (4) of the LNC Policy Manual, by email ballot to close at 11:59 pm PST on January 2, 2025:

> Motion: To strike out the current Section 1.01 (4) text and insert the following:
>
> 4) Removal from Office
>
> A Party Officer or At-Large Member may be disciplined as per the Bylaws Article 6.7 and 7.5, for cause, by the trial procedure outlined in the parliamentary authority. This requirement shall be modified by the following rules:
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> 1. At least 14 days' notice shall be given to the accused.
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> 2. The accused's rights of membership, except as they relate to the trial, may be suspended by a two-thirds vote upon the adoption of the charges and pending the disposition of the charges.
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> 3. The accused may appear either personally or by counsel. Defense counsel may be either a sustaining member of the national Libertarian Party as per Bylaws Article 4.4, a licensed attorney, or both.
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> 4. The manager for the Party shall be a sustaining member of the national Libertarian Party, as per Bylaws, Article 4.4.
>
> 5. Testimony and deliberations, as being "pending or potential litigation," as per Bylaws, Article 7.15, may be held in Executive Session. The LNC may, however, order a transcript or recording be made of the session even if in Executive Session.
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> 6. The LNC may act on the report of an investigatory committee at any point prior to the final adjournment of the next Libertarian National Convention.
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> 7. Prior to the commencement of the trial, the LNC, by majority vote, adopts a resolution to govern the trial specifying details not inconsistent with the procedures described in the Bylaws, rules in the policy manual, or the parliamentary authority.

Appellant Brittany Kosin does not dispute that this motion met all procedural requirements for adoption, but appeals the decision of the LNC to adopt it, per Article 7.12 of the Party Bylaws, on the

ground that some of the rules enumerated in the motion conflict with specified sections of the Party Bylaws. She argues that such infirmity renders the entire motion null and void, which would cause the Policy Manual to revert to its original language. Should the motion be upheld, Appellant alternatively petitions the Libertarian Judicial Committee (LJC) to strike any such provisions which conflict with the Bylaws, which she asks the LJC to identify. Article 7.12 reads as follows:

> Upon appeal by ten percent of the delegates credentialed at the most recent regular convention or one percent of the Party sustaining members the Judicial Committee shall consider the question of whether or not a decision of the National Committee contravenes specified sections of the bylaws. If the decision is vetoed by the Judicial Committee, it shall be declared null and void.

The motion purports, and it so appears, that all the rules enumerated therein are modifications or supplements to the disciplinary procedures pertaining to investigation and trial contained in various paragraphs of §63 of *Robert's Rules of Order, Newly Revised* (12th ed.), which parliamentary authority has been incorporated by reference into the Party Bylaws.[1] *Robert's* terms such rules "special rules of order," which it defines as rules that "supplement or modify rules contained in [the parliamentary authority]."[2] The Party Bylaws explicitly empower the LNC to adopt such rules,[3] as does *Robert's*,[4] which also provides that "[s]pecial rules of order supersede any rules in the parliamentary authority with which they may conflict."[5]

Provisions that conflict with Chapter XX of *Robert's*[6]

Despite the foregoing language that would appear to indicate that the Policy Manual amendments in question would supersede any rules in *Robert's* with which they conflict, Appellant contends the reverse, i.e. that the disciplinary procedures found in Chapter XX of *Robert's* may *not* be superseded by special rules of order because the Bylaws implicitly incorporate the specific language of Chapter XX into its disciplinary provisions. Per *Robert's*, provisions in the Bylaws which are in the nature of rules of order may be temporarily suspended, but may not be superseded by special rules of order.[7]

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[1] ARTICLE 16: PARLIAMENTARY AUTHORITY
The rules contained in the current edition of Robert's Rules of Order, 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.

[2] RONR (12th ed.) 2:15.

[3] Bylaws Article 7.1 ("The National Committee shall adopt rules of procedure for the conduct of its meetings and the carrying out of its duties and responsibilities.")

[4] RONR (12th ed.) 2:2.

[5] *Id.* 2:16.

[6] Chapter XX of *Robert's* is comprised of §§61-63.

[7] *Id.* 2:21-22.

Although no reference to Chapter XX appears in the Party Bylaws, Appellant supports her contention that it is nevertheless implicitly incorporated into its disciplinary procedures by reference to the following point of order passed at the regular Libertarian Party convention in Sparks, Nevada on May 29, 2022:

> Ms. Harlos should have had full due process, including a trial, for her removal as Secretary. Ms. Harlos' removal from the position of Secretary is null and void for that reason.[8]

Appellant does not contend that this point of order constituted an amendment of the Party Bylaws, but does contend that it constituted an official interpretation by the convention that the text of Chapter XX of Robert's was implicitly incorporated into the disciplinary procedures therein.

Appellant is correct that the convention does possess the authority to interpret by majority vote any ambiguous or otherwise uncertain provision that may appear in the Party Bylaws, although it may do so only when the meaning is not clear.[9] Appellant is also correct that if the text of Chapter XX has implicitly been incorporated into the Bylaws' disciplinary procedures, it would supersede any rule enumerated in the motion in question with which it conflicts, thereby rendering it of no effect.[10]

The disciplinary provision in the Party Bylaws by which Ms. Harlos was ultimately removed in 2021 is found in Article 6.7 which states, in pertinent part:

> 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. The suspended officer may challenge the suspension by an appeal in writing to the Judicial Committee within seven days of receipt of notice of suspension. . . . . At such time as the suspension is final, the office in question shall be deemed vacant.

This Article does appear to leave some room for ambiguity as to whether it intends to supplant Chapter XX in its entirety or merely constitutes special rules of order intended to supplement and supersede conflicting disciplinary procedures therein. As such, in determining that "Ms. Harlos should have had full due process, including a trial," the convention did adopt the latter interpretation. Appellant's contention that such determination further constituted an interpretation that the drafters intended to

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[8] *Minutes of the LIBERTARIAN PARTY NATIONAL CONVENTION MAY 27-29, 2022 SPARKS, NEVADA* (https://lp.org/wp-content/uploads/2024/10/CONVENTION-MINUTES_2022-FINAL-V3-compresse.pdf). (The LNC had previously voted to remove Ms. Harlos as Party Secretary pursuant to the disciplinary procedures in the Party Bylaws. This point of order was based on a continuing breach of the Bylaws for that action.)

[9] "*Each society decides for itself the meaning of its bylaws.* When the meaning is clear, however, the society, even by a unanimous vote, cannot change that meaning except by amending its bylaws. An ambiguity must exist before there is any occasion for interpretation. If a bylaw is ambiguous, it must be interpreted, if possible, in harmony with the other bylaws. The interpretation should be in accordance with the intention of the society at the time the bylaw was adopted, as far as this can be determined. Again, intent plays no role unless the meaning is unclear or uncertain, but where an ambiguity exists, a majority vote is all that is required to decide the question. The ambiguous or doubtful expression should be amended as soon as practicable." RONR (12th ed.) 56:68 (1).

[10] Chapter XX does not explicitly provide for its provisions to be superseded by special rules of order. Were its text deemed to be included in the Bylaws, therefore, it could not be superseded but by an amendment to the Bylaws. *See* RONR (12th ed.) 2:22.

implicitly include the full text of Chapter XX into Party disciplinary procedures, however, is a bridge too far. Not only is such intent nowhere evident in the text of the point of order, but such determination was not within the power of the convention to make, even had it intended to do so, as there is no hint in Article 6.7 of such possible meaning.

Appellant's contention, therefore, that the rules enumerated in the motion in question may not supersede provisions in Chapter XX of *Robert's* with which they conflict is incorrect.

Provisions that conflict with the Party Bylaws

Appellant is correct that the Bylaws do supersede any rules enumerated in the motion in question with which they conflict.[11] Of the rules enumerated in the motion in question, only rule 5[12] has been identified by Appellant as possibly conflicting with an explicit provision of the Bylaws,[13] specifically Article 7.15 which states:

> 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.

While rule 5 does appear to grant broad authority to the LNC to hold disciplinary hearings in executive session in violation of the Article 7.15 open session provision, it does not *require* the LNC to do so, and there may be specific instances in which the particular acts charged would require the disciplinary hearing to delve into subjects enumerated in the Article for which executive session is allowed. This is not to say that rule 5 does or does not conflict with Article 7.15, only to illustrate the difficulty of answering such question in advance of an actual case or controversy involving the application of such rule.

<u>Parliamentary authority of a body to adopt rules, in general</u>

Appellant and, most notably, Respondent, in credit to his integrity, both stipulate and even adamantly insist that it would be a violation of parliamentary procedure for the LNC to adopt a rule that conflicts with the Bylaws.[14] However, we find no support for such contention anywhere in *Robert's* or the Bylaws, merely that any such rule, if adopted, would be superseded by the Bylaws and thereby be of no effect.[15]

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[11] RONR (12th ed.) 2:12 ("Except for the corporate charter in an incorporated society, the bylaws . . . comprise the highest body of rules in societies as normally established today. Such an instrument supersedes all other rules of the society, except the corporate charter, if there is one.")

[12] *Quoted supra* p.1.

[13] We note there may be an argument that rule 2 may also conflict with the Bylaws, specifically Articles 6.7 and 7.5, but as Appellant has not raised that argument and the same reasoning as applies to rule 5 would apply equally to rule 2, we do not find it necessary to address rule 2 today.

[14] For those who may find it difficult to distinguish between how a rule adopted by the LNC may conflict with the Bylaws while the motion to adopt such rule does not, it may serve to ponder the difference between a baby and the act of giving birth.

[15] RONR (12th ed.) 2:12.

On the other hand, we do find some modest support in *Robert's* for the *opposite* conclusion. In 2:2, for example, we find that:

> [A]n assembly or society is free to adopt any rules it may wish (even rules deviating from parliamentary law) provided that, in the procedure of adopting them, it conforms to parliamentary law or its own existing rules. *The only limitations upon the rules that such a body can thus adopt* might arise from the rules of a parent body (as those of a national society restricting its state or local branches), or . . . . Emphasis added.

We would note in the emphasized portion the indication that the *rules* have limitations upon them, but not the body, which *can* nevertheless adopt them. Also, in 2:12:

> [T]he bylaws (as the single, combination-type instrument is called in this book) comprise the highest body of rules in societies as normally established today. Such an instrument supersedes all other rules of the society, except the corporate charter, if there is one.

We find in this quote the expectation that rules will exist that are superseded by the Bylaws. We believe the absence of any note that such rules should never exist because the act of adopting them would violate parliamentary procedure supports the notion that it is within the legitimate power of the body to do so.

Moreover, as discussed with regard to rule 5 in particular, it is difficult to fathom in advance all the circumstances in which a particular rule may find itself applied, and therefore how limited in scope such rule would ultimately be. But, even if such scope could be determined in advance, would it be within the power of the LNC to adopt a rule that only conflicts with the Bylaws on rare occasion? What about a rule that will often conflict with the Bylaws but not always? Or, a rule that will never, in reality, conflict with the Bylaws but theoretically could in some circumstance that will never or is never likely to occur? The legitimate boundary between such rules the LNC would have authority to adopt and those it would not might well be difficult to delineate.

To further complicate matters, an amendment to the Bylaws may render a previously adopted rule now in conflict; would the motion to adopt the rule years earlier suddenly be (have always been?) out of order? If so, and assuming a point of order is brought to nullify it,[16] what of any portion of the original motion that does not conflict? Would that portion be nullified, as well? And, what if the Bylaws are later again amended, back to their original wording? Would the point of order that nullified the motion to adopt the rule now, itself, be subject to a point of order?

Analogously, courts of law are often called upon to determine whether a particular statute conflicts with some provision of a constitution. They may declare such statute or part thereof unconstitutional on its face, or as applied in a particular instance, and may rule the law invalid in its entirety or carve out only its unconstitutional aspects. But, they rule against the statute, itself, not the legislature. Moreover, the statute remains on the books until the legislature explicitly repeals it, and the court will not generally

[16] *See* RONR (12th ed.) 23:9.

hear constitutional arguments until a case involving the statute actually arises, except in dire circumstances in which deferral may cause irreparable harm. The result of such declaration is that the statute or part thereof is simply thereby rendered inoperative, in effect merely superseded by the constitution. The statute is overturned, not the legislature's decision to adopt it, and the only repercussion to the legislature is political embarrassment or adulation, as the case may be.

Perhaps the lack of a clear prohibition in *Robert's* of a body to adopt rules that conflict with higher rules is out of respect to all of these consequent problems. Of course, the remedy per *Robert's* simply to amend or rescind the conflicting rule is always available, so there really is no need to presume such motions must be out of order.

Authority of the LNC to adopt rule 5

Where the application of this particular rule 5 would conflict with the Bylaws, it is certainly inoperative. And, in cases where it does not conflict with the Bylaws, it appears to grant no additional authority to the LNC that it does not already possess. As such, it seems totally superfluous. But, so do some of the other rules enumerated in the motion in question, which do not conflict with the Bylaws, and it is not a violation of the Bylaws for the LNC to adopt a rule that has no practical effect.

While there may appear to be no parliamentary support for the practically unwieldy proposition that the LNC violates the Bylaws when it adopts a rule that would be superseded by the Bylaws if applied, it is not necessary for us to answer this question today. We therefore limit our finding to that proposition that it is not a violation of parliamentary procedure or, consequently, the Party Bylaws, for the LNC to adopt rules such as rule 5 which provide ample discretion for the LNC to act pursuant to them without violating a Bylaws provision.[17]

Voiding of provisions that conflict with the Party Bylaws

Appellant requests, in the alternative, in the event the authority of the LNC to adopt the motion in question is upheld, that the LJC strike it or any of its provisions that conflict with the Bylaws.

As stated in the previous section, courts of law do exercise the power to strike statutes, in whole or part, on the ground that they violate a constitutional provision. That power does not explicitly appear in the United States Constitution, but was assumed by the Supreme Court in 1803 in the case of *Marbury vs.*

[17] Appellant further contends that if any portion of a motion passed by the LNC is determined to be in violation of the Bylaws, the LJC must veto the entire motion. As no portion of the motion in question has been determined to be in violation of the Bylaws, it is not necessary for us to reach a determination of that question today. However, we do not believe that Appellant's contention is correct. Bylaws Article 7.12, quoted *supra* p.2, grants the LJC the authority to veto *decisions* of the LNC, not merely motions. A single motion may encompass many acts, each of which is the result of a decision by the LNC. Absent some indication, therefore, of intent to limit the jurisdiction of the LJC to veto motions in their entirety, we would hold that the LJC does have the jurisdiction to veto a portion of a motion, where appropriate.

Madison.[18] The issue as to whether the Supreme Court possessed such power was in question at the time, as the limits of its jurisdiction were not specified in the Constitution.

In contrast, the Party Bylaws specify precisely the jurisdictional limits of the LJC, and they do not include the power to strike rules. The Bylaws should, perhaps, be amended to grant the LJC jurisdiction to strike rules as being in conflict with the Bylaws, but at present it appears to enjoy no such jurisdiction. As such, the LJC cannot grant Appellant's request to strike any rules in the motion in question that conflict with the Party Bylaws.

The motion in question is properly upheld.

[18] 5 U.S. 137 (1803).