

Friday, May 22, 2009

Let me echo thanks to the members of the Judicial Committee for their willingness to serve on this committee.

I have a request to make of you. It is the nature of human beings to make an emotional decision first, and then later review the facts. It's much harder to distance yourself from that natural reaction and let the facts of the matter lead you to the conclusion. I'm asking you to set aside any personal prejudices you have for or against any particular participants in this matter. I'm asking you to rise above some natural human tendencies and only consider the facts that are relevant here.

If all of us agreed about what to do all the time, we wouldn't need any organizational rules. The purpose of our organization having bylaws and adopting Robert's Rules of Order is to guide us when we DON'T all agree.

Our convention delegates create our bylaws to define how they want the organization to operate. Our bylaws were created long before this problem arose, and 2/3rds of the voting delegates agreed that LNC eligibility requirements were important and necessary. Our bylaws exist to prevent a small group - unrepresentative of the delegates - from "winging it" when these problems arise.

Personality conflicts are irrelevant to this hearing. The number of anonymous people claiming to leave the LP over this subject is irrelevant. Disputes about FEC rules are irrelevant to this hearing. We are a party that advocates personal responsibility, and LNC members have personal responsibilities to maintain their own membership status, whether or not they get courtesy renewal prompts from the party. Along the way, there have even been easily disproved allegations of database tampering as part of a conspiracy theory. None of these are relevant to the question before us.

This hearing is about nothing except whether the LNC and the Judicial Committee will respect the will of the convention delegates who adopted our bylaws.

Next, I'd like to take a few moments to address some of the procedural concerns that many of us have about this Judicial Committee hearing.

The Judicial Committee has accepted a portion of an appeal from R. Lee Wrights involving the question "Does a lapse in dues require a 'for cause' removal described in Article 8, section 5?"

In an email exchange with an LNC member on this very topic, one member of the Judicial Committee said that it is inappropriate for the Judicial Committee to deal with hypothetical questions. But the question at hand, "Does a lapse in dues require a 'for cause' removal described in Article 8, Section 5?" is precisely a hypothetical question. Though we all know the background, the question makes no reference to a specific act that the LNC supposedly took in violation of the Bylaws.

We continue to assert that the LNC did not suspend the appellant under Article 8.5. His personal negligence resulted in his failing to meet the bylaws eligibility requirements of Article 5.6 to serve on the LNC. He became ineligible to hold the office. He was not suspended. The Judicial Committee does not have jurisdiction over this situation under Article 8.5.

We continue to assert that the subject matter jurisdiction of the Judicial Committee is limited by the LP Bylaws Article 9.2 which reads, "The subject matter jurisdiction of the Judicial Committee is limited to consideration of only those matters expressly identified as follows:" In that listing that follows, the only way this Committee could hear a case regarding matters of eligibility for LNC membership listed in Article 5.6 and repeated again in Article 8.4 would be by a Denver delegate petition as specified in Article 8.11, not by request of a single appellant.

Even if this were a question of Article 8.5 over which the Judicial Committee had jurisdiction with this appeal, per the provisions of that Article 8.5, the Judicial Committee would only be permitted to do one of two things with it, "either affirm the National Committee's suspension of the member-at-large or order reinstatement of the member-at-large within 30 days of the hearing."

The Judicial Committee cannot affirm a suspension that never happened. And the appellant has been reappointed by the LNC to fill the vacancy created by his own lapse of sustaining membership, so neither can the Judicial Committee order reinstatement of someone who is already serving on the LNC. So it is not clear what the Judicial Committee expects they can do in this hearing.

This is not a court of common law. As such, the presentation of any legal doctrine (including the doctrine of stare decisis which would suggest that future Judicial Committee rulings could be bound by a precedent from this hearing) – does not apply here. Such legal doctrines are outside the boundaries of how this Judicial Committee may operate. The Judicial Committee is specifically limited to deciding on specific and past, not hypothetical future, actions of the LNC. The Judicial Committee is to exercise its duties in accordance only with our bylaws, and the parliamentary authority adopted in our bylaws...not expand its powers with external legal doctrines.

Now leaving all that aside, you are here, you are having this hearing, so let's deal with the merits of the case.

There are two questions that are important here:

- Must a member of the LNC maintain eligibility requirements specified in Bylaw Article 5.6 in order to continue service on the LNC?
- May the LNC through any act (or failure to act) ignore the eligibility requirements specified in Bylaw Article 5.6?

LP Bylaws Article 5 defines levels of membership in this party. At the end of that article, Section 6 reads as follows: “Only sustaining members shall be counted for delegate apportionment and National Committee representation. Only sustaining members shall be eligible to hold National Party office or be a candidate for President or Vice-President.”

Regarding the first question (must an LNC member maintain eligibility to continue to serve), the language of Bylaw Article 5.6 unambiguously states that one must be a sustaining member to be “eligible to hold” the office.

The delegates could have limited the language to say you only had to be a sustaining member to be elected, but evidently they believed that the requirement to be a sustaining member should be ongoing throughout the term of office.

Prior to tonight, no one, including the appellant, contested whether his sustaining membership lapsed. He has made public comments acknowledging his failure to meet the sustaining membership requirement.

The answer to the first question is self-evident. An LNC member must maintain their eligibility in order to continue to hold the office. The appellant failed to do that, so he could not hold the office.

Regarding the second question, (May the LNC through any act -or failure to act- ignore the eligibility requirements specified in Bylaw Article 5.6?) some individuals assert that the LNC is required to conduct a vote to enforce the bylaws. And that somehow, if we just didn't bother to vote, the LNC would be free to ignore any requirement imposed by the delegates in convention.

No vote of the LNC, even if unanimous, can suspend the Bylaws. The inability to override the bylaws is discussed throughout RONR.

“Rules contained in the bylaws (or constitution) cannot be suspended – no matter how large the vote in favor of doing so or how inconvenient the rule in question may be – unless the particular rule specifically provides for its own suspension” – RONR (10th ed.), p. 254, lines 28-32.

Let me ask you this. Would the LNC have the right to pass or even consider a motion that read, “John Doe is a member of the LNC even though he does not meet the eligibility requirements under our bylaws?”

Of course not. The LNC had no option to keep the appellant in his office once he became ineligible. To even allow a vote on that motion would be considered improper.

“Motions that conflict with the corporate charter, constitution or bylaws of a society, or with procedural rules prescribed by national, state or local laws, are out of order, and if any motion of this kind is adopted, it is null and void.” – RONR (10th ed.), p. 322, lines 15-18.

Consider also the following problem: If an LNC member's failure to meet eligibility requirements could only be enforced with a "for cause" suspension per article 7.8 for officers or 8.5 for at-large members, you must conclude that the delegates did not intend for the eligibility requirements in Article 5.6 to be enforceable against regional reps because the LNC has no power to remove a regional rep, even for cause. With this logic, a region could knowingly ignore the eligibility requirements, appoint Nancy Pelosi to the LNC while she is running for re-election as a Democrat and while she refuses to join the LP, and this argument would say the LNC must seat her as a member. Only the region can remove a regional rep, and regions don't get to ignore the bylaws any more than the LNC does. Our convention delegates did not create an absurd situation where the LNC would have to seat an ineligible member just because the region refused to respect the bylaws. Eligibility requirements in Articles 5.6 and 8.4 must be enforceable for ALL LNC members, whether or not the LNC has the additional power to remove them for cause.

The phrase "for cause" used in Article 8.5 is described in Robert's Rules on page 642 as being "misconduct or neglect of duty in office". Eligibility requirements must be met to even hold the office. Only while you're holding the office could you possibly engage in misconduct or neglect of duty in office. If our secretary intentionally published blatantly false minutes, that would be misconduct in office subject to a "for cause" suspension. If our treasurer failed to produce an annual financial report, that would be neglect of duty in office, also subject to a "for cause" suspension. The appellant's failure to maintain eligibility requirements to hold office was not misconduct or neglect of duty in office, so it's not a "cause" requiring a suspension vote.

Eligibility and misconduct are very different concepts. If our bylaws also required that an LNC member must be less than 60 years old to be eligible to hold office, reaching one's 60th birthday while in office would not be an act of misconduct. The 60-year old would simply become ineligible, and his seat would become vacant. The LNC would not vote on whether there was "cause" to suspend that person subject to a Judicial Committee appeal.

I'll spend the rest of my time talking about due process. It has been alleged that the appellant has not had the benefit of "due process" here, and we have

some obligation to make Article 8.5 apply to subjects outside of 8.5 or else there has been no due process.

The definition of “due process” is simply the concept that government must respect all of the legal rights that are owed to a person according to the law. The “law” in this situation is our party’s bylaws, so the question of “due process” is what process is “due” to him according to our bylaws. “Due process” does not in and of itself grant any specific process not created in the bylaws, but merely asks if the bylaws were followed. Whatever is in the bylaws, that’s the process that is “due”.

If our bylaws create no appeal process to a particular situation (such as an immediate vacancy when an LNC member misses two consecutive meetings), he only gets the process that is “due” to him in the bylaws. An LNC member who vacated their seat in such a way could not validly argue they were being deprived of any “due process”.

Robert’s Rules of Order does have some automatic processes in place for an organization to deal with disputes about the rules. That process was used in this situation. Here’s how it worked. When the appellant’s ineligibility was noted and his position was declared vacant, four members of the LNC used parliamentary process to question the situation. They moved (I’m paraphrasing) that because the LNC had not suspended the appellant, he was still an At-Large Representative. The chair saw the motion to be in conflict with eligibility requirements in our party’s bylaws, and he had a duty to rule that motion out of order. The chair’s ruling was appealed. For 15 days the LNC members had a chance to consider our rules, discuss the matter, and then vote. The overwhelming majority of the LNC saw that the appellant was out of compliance with the eligibility requirements of the bylaws, and they voted to uphold the ruling of the chair.

In a brief submitted to this committee arguing for the appellant, the author contends that only if the LNC had voted to overturn the ruling of the chair would the appellant have received the process he was “due”. “Due process” is not “due outcome”. It just asks if the process prescribed by the bylaws was correctly followed, and it was. There is no other process in our bylaws to deal with LNC eligibility issues.

CONCLUSION

It would take much longer than the time allotted here today to address everything I would like to address. But I think I have covered the core issues and facts.

Our role here is simply to study a question of bylaws and ask if they were followed.

The appellant's sustaining membership was lapsed. He has publicly acknowledged that he was lapsed. The only question left to consider is what our bylaws say about the matter.

The Judicial Committee is hearing a hypothetical question for which they can prescribe no remedy. But the answer to the question, "Does a lapse in dues require a 'for cause' removal described in Article 8, section 5?" – the answer is "no".

Bylaws Article 5.6 clearly gives us no choice. The appellant became ineligible to hold the office, and his seat was vacated. The LNC does not have the option of ignoring the eligibility requirements of the Bylaws Article 5.6. For our secretary and chair to have ignored the ineligibility would have been a neglect of their duty in office. This situation has already been remedied with the only legal option available to us, re-appointing the appellant to fill the vacant seat once he re-established his eligibility.

Our bylaws only allow "for cause" suspensions for issues of misconduct, not for questions of eligibility. Besides the process already conducted by the LNC of sustaining the ruling of the chair on the question, there is no other process in our bylaws to deal with LNC eligibility issues. The appellant received the process "due" to him according to our bylaws.

In the email from the Judicial Committee announcing the format for this hearing, the author concluded with, "I look forward to a principled conclusion to this matter." The Judicial Committee's role is not to reach a particular conclusion, but to follow a principled process. Your duty and our duty is to follow the process even if the logical conclusion does not meet our personal desires about what we would like the rules to be. I hope you will have open minds, consider the facts and arguments, and follow a principled process to reach your conclusion.

I ask that you affirm what we already know to be true:

That the appellant became ineligible to hold his seat in accordance with Article 5.6 and that the LNC followed the only legal process available to it to reappoint him to the vacancy.

Thank you for your service. I am available to answer any other questions you may have.

Alicia Mattson