Libertarian Party of California

Judicial Committee Report

23 June 2019

Re: Actions of the 2019 Convention Regarding the Platform

Joe Dehn (Chair)
Matthew Pautz, D.O., J.D.
Jill Pyeatt
Bob Weber
Susan Marie Weber

Executive Summary

The Judicial Committee has ruled that the actions of the 2019 Convention regarding the Platform were improper.

A majority of the committee supports the appellants' interpretation of the rules regarding modification of the Platform, specifically that the rules do not allow the deletion of the entire Platform by a single simple-majority vote. Various members of the Judicial Committee also support other of the appellants' arguments, which may be seen either as additional reasons to judge the convention action invalid or as reasons that the remedy is appropriate.

A majority of the committee considers it appropriate to overturn this improper action for one or more of the following reasons: because the nature of the rule violation affects the rights of members of the party generally, because a similar controversy could occur again, because the ordinary processes for correction of error within the convention itself were compromised, and because there is a remedy available that addresses all of the appellants' concerns without creating any significant burden to the respondents.

The effect of this ruling is that the Platform in effect at the start of the 2019 Convention remains in effect. This ruling is specifically not an endorsement of the existing content of the Platform itself, or a recommendation that it should or should not be changed in any particular way by some future convention.

Parties

This ruling arises from an appeal submitted on 11 May 2019 by the following LPC members, named in the cover message accompanying their arguments: Mark Hinkle, Gail Lightfoot, Jonathan Jaech, Mark Herd, Jennifer Imhoff, Robert Imhoff, Starchild, and Ted Brown. These are collectively referred to herein as “appellants”.

Three LPC members submitted counter-arguments in a document submitted 2 June 2019, identifying themselves in that document: Chuck Hamm, Alicia Mattson, and Mimi Robson. These are collectively referred to as “respondents”.

Caryn Ann Harlos, who assisted appellants in preparing their initial document and who submitted some supplementary written comments, specifically stated that she did not want to be considered among the appellants. Brent Olsen attended the hearing but did not present arguments. Neither of these individuals is included when the term “appellants” or “respondents” is used here.

Written Arguments and Related Documents

Copies of appellants' written submission of 11 May and respondents' submission of 2 June are available online, as are the supplementary comments by Harlos, as well as copies of the LPC Bylaws and Convention Rules in effect at the time of the convention and a copy of the Platform Committee's report. *[http://dehnbase.net/lpcjc/201905-platform]*

Both appellants and respondents make reference to a video recording of the convention which is available on YouTube. *[https://www.youtube.com/watch?v=uSQRLlgSihs]*

Minutes of the convention were not complete or approved at the time of this appeal, do not appear to have been referenced by either party, and were not relied upon by the Judicial Committee in making its ruling.

Hearing

A hearing was held by telephone conference call on 9 June and lasted approximately three hours.

Attending all or part of this hearing were:

Members of the Judicial Committee:
Joe Dehn (chair), Dr. Matthew Pautz, Jill Pyeatt, Bob Weber, Susan Marie Weber
Appellants:
Mark Hinkle, Jennifer Imhoff, Robert Imhoff, Starchild
Respondents:
Chuck Hamm, Alicia Mattson, Mimi Robson
Other:
Brent Olsen

This hearing was organized into the following sections:

Opening Statements
Questions from the Judicial Committee
Closing Statements

Recordings of each section of the hearing are available online.
[http://dehnbase.net/lpcjc/201905-platform/hearing/]

Committee Vote

The Judicial Committee voted in this matter on 10 June. Four members voted in favor of overturning the action of the convention: Joe Dehn, Dr. Matthew Pautz, Jill Pyeatt, and Susan Marie Weber. One member voted to sustain the action of the convention: Bob Weber.

Majority Opinion – Joe Dehn, Dr. Matthew Pautz, Susan Marie Weber

The Job of the Judicial Committee

The LPC Bylaws define the job of the Judicial Committee when a question comes up as determining "the consistency of that action or inaction in accordance with the governing documents of the Party". That sounds simple enough, but what does it actually mean? After all, those documents exist, and anybody can look at them. The problem arises when different people look at the same documents and come to different conclusions. That's when the Judicial Committee is asked to play a role, and that's what happened in this case. The parties involved typically believe their own story, and may honestly believe that their view is the obviously correct one. But when two views are contradictory, somebody, somehow, has to resolve the question. That's why we have a Judicial Committee.

There are several things that are clearly not the Judicial Committee's job. First, it's not the job of the Judicial Committee to decide what our Platform should say. Members of the Judicial Committee do have their own various opinions on that subject, but we did not see it as our job to decide on a case like this on that basis. Anyone who expected any of us to vote for the appellants simply because we support the current Platform or for the respondents simply because we want to see a different sort of Platform may be basing their expectations on how they would act if they were members of the Judicial Committee, but that is not how we approached the question.

It is also not the job of the Judicial Committee to automatically uphold the vote of some other body, simply because a vote happened. We are libertarians, not democrats. The "will of the majority" is not our most sacred value. The delegates acting in convention are a *mechanism* that we may choose to use to make our decisions, but it is not an end in itself, and for the sake of the greater interest of the party as a whole it is subject to procedural limitations. This is the reason we have Bylaws. Bylaws are subject to interpretation, about which reasonable people may disagree. They can also be changed, with appropriate care and consideration. But the notion that a simple majority vote of any set of delegates at any instant in time is automatically the ultimate authority in matters of party business regardless of any sort of checks and balances is repugnant to the entire concept of an ongoing "organization" that is defined by a longer-term purpose. We expect better than that even of government – we should not accept it as libertarians within our own organization.

It is also not the job of the Judicial Committee to engage in theoretical debate about hypothetical situations that have not arisen or are unlikely to arise. There are some who treat Robert's Rules as a kind of mathematical puzzle. But law is not mathematics, and it does not necessarily provide a neat answer to every conceivable question. A question like "if there must be a Platform, and there is only one plank, and that plank violates the Statement of Principles, and the Judicial Committee is asked to rule on it, does the universe explode?" may be fun to talk about, and some of us may even enjoy playing such games in other circumstances, but it's not the job we had to do here. Law evolves to address cases that have arisen in the past or that people reasonably expect to arise in the future, and it was our job to apply that law as best we could to the actual controversy that was brought before us.

The job of the Judicial Committee when asked to rule on a question is, as stated in the Bylaws, to determine "the consistency of that action or inaction in accordance with the governing documents of the Party". That can be a complicated job. But it's the job that we were given, and it is what we have done.

The Nature of Our Platform

It is common for political parties to have a platform, but they are not all of the same nature. There are several characteristics of the LPC's Platform and the rules that relate to it that are central to this ruling.

Our Platform has a particular structure – it is organized into units identified as “planks”, which each address a single issue of public policy or government action, or a small set of closely related issues. It has also maintained the same basic structure throughout the LPC's history. This is not true for all LP state affiliates, but it is true for us. This has implications not only for what kinds of rules are appropriate for us, but also for how those rules are properly interpreted.

Our Platform is not adopted anew by each convention. The process by which the Platform in effect at any given time is developed is an incremental one, involving the addition, modification, or deletion of planks, with those planks not acted upon by a particular convention remaining part of the Platform.

This type of Platform plays an extremely important and ongoing role in defining our party. Its function is not limited to any campaign season or electoral cycle. It is not exclusively an outreach tool or exclusively an internal document. Some may consider this a defect, others may consider this a good thing, but it is what it is.

Our Platform and our Bylaws have always served to complement each other, fleshing out in their respective domains the nature of our party. Bylaws and associated rules have the primary function of governing *how* we do things, and in that respect they govern how we modify our Platform, but in terms of importance the Platform has never been treated as secondary, for it has historically served the equally important role of defining *what* we are trying to do. And for many members, the Platform is the more important document, the one that matters more to their choice to become a member and continue supporting us. Nobody joins an organization because they love its bylaws.

Without a Platform of the general sort we have now, the LPC would be a different kind of party. Some might say it would be an improved party, others might say it would be diminished, but it would definitely be different in a significant way. The Platform is not merely an optional appendage, like a resolution on some transient issue, or a committee that might be found useful for performing a function that could also be done in other ways. It is, for better or worse, central to our image, among both our members and the general public.

This is not the only way a political party can operate. Other parties have other kinds of platforms, differing not only in their positions on public issues but also in their structure and how they are adopted and used. This is even true just considering Libertarian Party state affiliates – there are some state affiliates that have no platform at all. However, this is the sort of platform that *we* have, and that we have always had.

The sort of platform we have is older even than the LPC itself, as there already was such a platform in place at the national level before the LPC was formally organized. The basic structural characteristics of our Platform pre-date even the formal organization of the national LP, as they can be found in the temporary platform prepared in 1971 by the Committee to Organize a Libertarian Party.

This does not mean any of this must always be so. But it is what exists now, and what existed when our rules were written.

The Primary Issue

The primary issue in this case is whether the governing documents of the party allow the entire Platform to be deleted by a single, simple-majority vote. To determine this, we must both examine the rules and decide what they mean.

Appellants and respondents base their arguments on different interpretations of these rules. If they agreed, we would not have had to choose between them. The wording of rules is always open to interpretation, and before they can be applied we must decide on some interpretation.

In trying to come up with a correct interpretation, we must of course start with the words. But bare words are never enough for a proper understanding of any example of language. Every ordinary sentence makes use of terms that are not defined there, and is written by somebody who is making certain assumptions about the context in which it will be read. This can be because the author of a written rule is intentionally trying to avoid excessive wordiness, but it's also just a basic feature of language that nobody ever provides in any statement every bit of information that might be necessary to understand it. Context matters.

How words are used in the particular organization and the history of the processes about which the rules were made can help us understand their meaning. Something that may look like it "could" have many different interpretations without considering context may look very different when context is properly taken into account. In the case of an organization's rules, the different sentences and sections often relate to each other, and this relationship can make one or another interpretation more reasonable. The organization's history and traditional practices can also make one interpretation or another more reasonable.

Respondents would have us imagine that the Bylaws are the basis of our Platform, and that the way we have been doing things is just one possible thing we might do, consistent with the rules but not necessarily implied by them. This, as a matter of historical fact, is backwards. The type of Platform to which LPC members are accustomed, and which the rules we have now were written to address, is an institution that goes back before the first LPC convention – in fact it goes back even before the Statement of Principles! Attempting to interpret the language in other documents without taking this into consideration would be foolish.

The appellants make the same mistake in attempting to invoke the provision of Robert's Rules regarding "Consideration by Paragraph". In spite of the fact that this provision specifically mentions "articles of a platform" as being one of the cases to which it applies, our Platform is *not* of the sort being addressed there by Robert's Rules. It is obvious to anyone with any familiarity with our history that it has never been our practice to adopt an entire platform all at once, so we have never had reason to make use of what Robert's Rules says about such a process. We have our own rules that govern how we actually do it (which are what we *do* need to be looking at), and these rules override anything that might appear to be contrary in Robert's Rules. So both the appellants' reference to this Robert's Rules provision and the respondents' lengthy exposition on what it means are equally irrelevant to our ruling.

Recognizing this limitation of language is not the same thing as giving priority to tradition over written rules. To the extent that tradition or other long-term behavior is found to be actually inconsistent with written rules, something must be done to resolve the conflict – either the behavior must be changed to conform with the rules or the rules must be changed to allow the behavior. But when multiple interpretations might be “possible” without considering context, if one interpretation matches the way things are actually done by the organization while others don't, that interpretation is the more reasonable one.

Statements about how the Platform may be modified are found in Bylaw 20 and Convention Rule 8.

The former states that “The Platform may be amended by deletion, substitution, or addition of any plank at any Party convention. The delegates may, by majority vote, delete a plank. The delegates, by a two-thirds vote, but not less than a majority of all registered delegates, may add a new plank, or substitute a new plank for an old plank.” The latter states that “The Chair of the Platform Committee shall report the Committee’s recommendations to the floor, plank by plank. The delegates shall vote on each recommendation separately. After the delegates have debated and voted on all of the Committee’s recommendations, if time permits, any delegate may propose new planks or additional amendments from the floor, which the delegates shall vote on separately.”

Note that both of these use the specific term “plank”, and that in saying what may be done by a simple majority the Bylaws language refers to “a plank”.

The fact that some of the words in these provisions might be interpreted different ways in other contexts does not mean that their combination is ambiguous. The same word "recommendation" occurs in each of the first two sentences of the convention rule. If each "recommendation" is voted on separately, and the "recommendations" are reported plank by plank, then it is a natural consequence that the voting cannot be any less specific than "plank by plank". This rule supports a bylaws provision which refers specifically to voting requirements for adding or deleting “a plank”. A literal reading of the phrase “a plank” matches perfectly the structure of the procedure described in the convention rule. These two provisions in our governing documents fit together to describe a process that makes sense – a process by which the Platform is incrementally modified by a succession of separate votes each concerning a single plank. Not only does it all make sense linguistically, but the process described is the one which the LPC has historically followed, and so for that reason as well it is more likely to be the intended meaning.

It is important to understand that "plank" is not just an arbitrary amount of text. It is a logical unit, the character of which was established back at the very beginning of the LP, even before the formal existence of the LPC. Respondents try to gloss over that by several times referring to the requirement for deleting "text" (e.g., "a motion to delete text"). The simple majority requirement very definitely does not apply to any arbitrary deletion of "text". In particular, it is well established that a proposal to delete *part of a plank* must be treated as an amendment, and is therefore subject to the higher requirement. That doesn't, by itself, tell us that deleting multiple planks must also be treated as an amendment, but it does tell us that there is something special about the action of deleting "a plank" rather than some other amount of text.

Implicit in the objection to an action to delete the entire Platform happening by a simple majority in one vote is the possibility that it could be done by a supermajority – either directly by a supermajority or in a two-step process by which some rule was first changed or suspended to allow the actual vote to delete. Although individual members of the Judicial Committee have views on this, the Judicial Committee did not vote on this and this ruling does not attempt to answer the question of which such procedures would be acceptable, because that was not necessary to reach our conclusion. Since the rule does not allow deletion of multiple planks by a simple majority and the convention did not vote – and indeed was not even asked to vote – on *any* motion that might have allowed the deletion of multiple planks in a single vote, the rule was still in effect and so the vote that actually was taken to delete the entire Platform was not proper.

This is what we consider the most reasonable interpretation of the actual rules in place now. If the delegates at some future convention believe that this interpretation is too restrictive, they could of course change either the Bylaws or the Convention Rules or both to favor some other interpretation. It would require no more than a few words to decisively do so – in either direction.

Contributory Issues

Consequences of Not Having a Platform

Appellants argue that the Bylaws require that there be a Platform, so the action of the convention was invalid simply on the basis that it left us with no Platform – even if, for example, the delegates had gone through a process of debating and voting to delete every plank individually there might still be a basis to object. Members of the Judicial Committee had varying opinions on this, ranging from agreement to disagreement to considering it a hypothetical question that there was no need for us to address. We did not vote on it, and it is not directly the basis of our ruling. However, a majority of us did agree that the consequences of not having a Platform are significant enough that they do have a bearing on our ruling. They could have such a bearing in two ways: (1) they provide further support for our interpretation of the rules and (2) they support the appropriateness of the remedy.

Appellants and respondents devote much attention to nuances of the word “shall” in Bylaw 20. This misses the point. The expectation that there will be a Platform is built into the Bylaws in multiple ways. Not only does the Platform have its very own Bylaws article, but the article about the Program refers to the Platform – indeed the whole reason for instituting the “Program” was to supplement the Platform by having a document that would emphasize interim and practical policies *in addition* to what we already had – and it's obvious from the Bylaws that this document is expected to be developed within a context in which a Platform exists.

The governing documents as they stand also make the Judicial Committee responsible for judging whether certain proposed statements are consistent with the Platform. Specifically, there are provisions for review of Program planks and resolutions. Consistency with the Platform could also come up indirectly in cases where the Judicial Committee was asked to rule on some other matter, e.g., if the Executive Committee acted to remove an officer for cause, citing as part of the cause that the officer was misrepresenting the positions of the party. Respondents suggest that not having a Platform would represent a simplification in this respect, since it would not be possible to show any such conflict with a Platform that does not exist. This may be technically correct, but as a practical matter this would not make life easier for anybody, because the same provisions say that such statements must not be in conflict with the Statement of Principles, which is much harder to apply directly to statements about particular laws or public policies. The Platform is the mechanism we have always had in place to allow the *delegates* to apply our general principles to existing laws, proposed laws, and other actions of government. Without that guidance from the delegates, the Judicial Committee would have nothing but the Statement of Principles to guide us in resolving any dispute that might come to us. The five members of the Judicial Committee trying to resolve a dispute, for example, about a Program plank advocating a value added tax, a change to abortion laws, or supporting "sanctuary cities", by reasoning *directly* from the Statement of Principles, is a situation that nobody should want.

Without a Platform, members and prospective members would have far less assurance that their efforts are going to support positions with which they agree. Many people join the LPC because of what our Platform says. Some support us because of what our Platform says about a small number of issues that have special significance to them. The reverse may also be the case, that there are some people who are not interested in supporting us because we have a detailed Platform. The point here isn't whether having a more or less detailed Platform is better – the point here is that having no Platform at all is so different from having the sort of Platform we have always had that it, in effect, in the minds of many members, would be as radical and permanent a change to the nature of the LPC as many other changes that would clearly require amending the Bylaws.

Our ruling does not attempt to answer the question of whether something less than actually amending

the Bylaws (e.g., by deleting various references to the Platform, or inserting words such as “may”) would be sufficient to allow us to not have a Platform. But these considerations do provide *additional* support for our conclusion that the wording in Bylaw 20 about deletion of “a plank” by a simple majority should not be read as applying to deletion of all planks at once. If the delegates to some convention, after adequate deliberation and demonstration of an appropriate level of support, however negative the consequences may seem to others, really decide that the LPC should have no Platform, there are certainly ways they could achieve it, but it's just not the sort of thing that should be done by a single, simple-majority vote.

Notice

Appellants make various complaints about the way events transpired that created a sort of “ambush”. Respondents correctly point out that there is no specific notice deadline for a Platform Committee report. So lack of advance notice would not ordinarily be grounds for challenging a vote by the delegates on a recommendation of the Platform Committee.

But in this case, the action recommended by the Platform Committee was itself improper. One of the functions of rules is to let people know what they can reasonably expect to happen. Rules tell people what business is likely to come up at a convention, when it is likely to come up, and what sort of votes are more or less likely to pass. In the case of changes to the Platform, we have rules about how changes are made, and we have a standing agenda that tells people when those changes are going to be voted on. There are additional rules that specify the amount of time allowed for debate of proposals, which historically have limited the number of changes that can be adopted in the allotted time. Delegates make decisions about when they are going to arrive and leave, including making travel arrangements, based on these kinds of expectations. And our current system of delegate qualification makes *all* central committee members who have been members for at least 90 days potential delegates – as a practical matter, the only difference between a central committee member who is a delegate and one who isn't is that he/she decided to show up. So expectations about what will be voted on may well have affected the choices of members who never registered as “delegates” for this convention at all.

What the Platform Committee proposed, but did not reveal to the delegates generally until the day of the vote, was something that could not have happened if the rules had been properly applied. It's not that it was theoretically impossible – with enough support and/or enough time, anything is possible. But given the actual level of support and the actual time available, about both of which people can often make reasonable estimates in advance, the probability of it happening was very small. Events only transpired as they did because the rules were not properly applied.

This was not simply a case of the Platform Committee choosing to include in its report at the last minute a proposal relating to some controversial plank, e.g., that we delete our plank about abortion. In such a case, while many people might be unhappy, “you snooze you lose” would be an acceptable way to dismiss their concerns. But the Platform Committee's recommendation was not simply “controversial” with respect to content – it was unexpected in its form. If we view Convention Rule 8 as defining the Platform Committee's job, some might even say that this was not a proper report from that committee at all.

Expectations about what is appropriate for the Platform Committee to propose may also have informed the choices that delegates at past conventions made about notice requirements. If the delegates at a future convention change the rules so that major structural change to the Platform clearly is allowed to be part of a Platform Committee report and then acted on by a simple majority vote, those delegates may well also decide that the Platform Committee should be required to report any such recommendations a certain amount of time in advance.

Respondents give great emphasis to efforts they say they made to involve members in the development of their ideas, and provide evidence that their ultimate goal was widely known. But with respect to the *form* of their recommendation, any efforts they made to inform delegates or members generally must be judged a failure. It is clear that many delegates did not know this specific motion is what they were going to be asked to vote on until very shortly before the vote. Neither members who might have chosen to come to Concord if they had this knowledge in advance, nor actual delegates who, before seeing the report, made travel commitments to leave before the end of the afternoon, had a chance to make an informed choice.

Respondents further cite the rules as not only *not requiring* the same sort of advance notice by the Platform Committee as is required for the Bylaws Committee, but actually making such advance notice *impossible* because the committee isn't even constituted until shortly before the convention, and important decisions are commonly not made until the meeting on Friday. This is a good argument from the rules but it isn't a good argument from the facts. The Platform Coordinator's account of the actual process in this case makes very clear that the Platform Committee decided early on, at least several weeks before the convention, that they not only wanted to replace the entire existing Platform with something they considered better, but also that the mechanism they would propose to do that was a mass deletion without any kind of 2/3 vote. There was plenty of time for them to share this plan with delegates and members generally, but they did not.

They did, however, make this plan known to the Chair and, directly or indirectly, to the member who was going to serve as parliamentarian, both of whom had plenty of time to consider the legitimacy of the proposed motion, which could have included consulting members who would have been expected to interpret the rules differently. It was their choice not to do this that created the sense of “ambush” and led to a situation in which delegates on one side of the issue felt themselves to be struggling to make their arguments in the face of a party “establishment” that held all the positions of authority during that portion of the meeting and who all *did* have advance knowledge of what was coming. And this, in turn, contributed to the atmosphere of confusion about proper procedure.

Incorrect Instruction Regarding Reconsideration

Parliamentary procedure provides many mechanisms intended to help make the decisions of a body reflect its true will, including mechanisms to correct errors. They can operate on multiple levels, even to allow errors in correcting errors to be corrected. These mechanisms ordinarily, if they are allowed to work properly, can deal with most controversies that arise within a meeting, which is usually the best time to deal with them since that minimizes the effect of a controversy beyond the meeting. However, this process can, especially in the face of time pressure, sometimes break down to the point that important errors do not get corrected and/or that the true will of the delegates is left unclear.

One such mechanism is the motion to reconsider. Appellants complain that the convention Chair misinformed the delegates about their option to reconsider the vote to delete, and that although she at a later time did say that such reconsideration would be in order, the original wrong information prejudiced the situation. Respondents say that's not what happened – that the Chair was answering a different question at that point – and since she did later make a clear statement that reconsideration was an option, no permanent harm was done.

The question that the delegate asked was: "Would, given what the gentleman just observed, the language that the second stage, or that, excuse me, that the first vote would only be warranted in anticipation of the second stage passing, and if the second stage does not have the votes to pass, would a move to reconsider the first vote be in order?"

The Chair responded. "No, I would say that it would not be in order". She then went on to explain that

the motions were not automatically linked.

It's certainly possible that the Chair understood, as respondents suggest, the question to be about some sort of automatic reconsideration, but there is nothing in the actual wording of the question that defines it to be about that. The wording that the delegate used for the final part of his remarks, the actual question part, was very direct: "would a move to reconsider the first vote be in order?". He was clearly asking about a separate motion, that somebody might make, not any kind of automatic revote.

So why did he preface his question with that additional language? Taking his remarks as a whole, it is clear that he was simply identifying a situation that might happen (and which then did happen), one in which some people would likely *want* the previous action reconsidered, and he was asking if a motion to reconsider would be permitted in such a situation. And the Chair said no, it would not be in order. Maybe she did misunderstand the question – and given the generally confused state of things it would be understandable if she did. But to anybody else listening to the question and her answer, it would have sounded like she was saying that an actual motion to reconsider would not be in order in that situation. For the purpose of considering the effect on the process, what was going on in the Chair's mind is irrelevant – the effect on everybody else in the room would be exactly the same regardless. They heard a delegate ask if a motion to reconsider would be in order in that situation, and they heard the Chair say no.

This is clearly incorrect. A motion to reconsider the deletion certainly was in order at that point. It's true that the original delegate or some other delegate could have taken things further by then saying the magic words "I move to reconsider", which would have then allowed for an appeal of the Chair's ruling if she said no again, but it's easy to understand why nobody did. They had already heard what sounded like the Chair's ruling on that, and while they certainly had the *right* to challenge it, if they were busy trying to approach the issue some other way they may simply not have felt that challenging her on that point was the highest priority at that time.

It's also true that the Chair later said that a motion to reconsider the deletion *was* in order. But that came later, after the delegates had already moved on to a series of other points of order and associated procedural motions that occupied their attention for most of the remaining time of the convention. For a critical interval, the delegates were making their choices of how to approach the problem with the understanding that the Chair was not going to allow a motion to reconsider. A vote to reconsider immediately following the failure of the Platform Committee's second proposal to pass would have been very valuable in clarifying the delegates' true wishes with regard to the announced outcome, which was not even the Platform Committee's stated first choice. It also would have made pretty much moot the separate disagreement between appellants and respondents about the exact nature of the second count in the vote to delete, with the resulting disagreement about what should have been allowed to change between the two counts, since anybody who wanted to vote against deletion because of the failure of the second proposal *or* for any other reason would have then had another chance to do that. But because of this incorrect instruction, the opportunity to make use of this corrective procedure at the most useful time was missed.

It is the purpose of conducting votes *within a framework of rules,* an approach to decision-making that is sometimes summarized by the term “due process”, to both determine the true will of the members of an organization and to assure the members that this in fact happened. Factors like notice, requiring supermajority votes for decisions that have significant long-term consequences, clarity and a common understanding of parliamentary procedure, and mechanisms to correct errors, all can work together in various combinations to achieve these ends. They can also fail to achieve these ends if they are not applied or if their application is compromised by misunderstanding, confusion, and the pressures of limited time.

There is no one party to blame for the state of affairs that developed at this convention. If the Platform Committee had made different choices, either about how they worded their proposal or about how they went about informing delegates and other members about exactly what was going to be in their report, many aspects of this controversy might have been sorted out before the convention even started. If the people running the convention had taken greater care in the instructions they gave or didn't give to the delegates, the delegates might have had a better chance to sort things out themselves. And yes, the delegates who were objecting to the procedure might have similarly been able to make better use of Robert's Rules to achieve that same level of clarity. There is plenty of blame to go around. But a rule doesn't stop existing just because somebody fails to enforce it, and the rights of the members at large don't stop existing just because their representatives don't follow the rules. That can often be a practical consequence of such failures, but it is not a necessary consequence if additional remedies are available.

To be clear, it is not a part of this ruling that any of these additional considerations would be, in any other context, sufficient by itself to make an action of the convention invalid. Nor is it the case that a number of factors that are not each sufficient automatically add up to require us to rule an action invalid. Our ruling is sufficiently justified by the basic error of allowing a single, simple-majority vote to delete the entire Platform. However, these considerations go a long way to explaining how the two sides can see their own positions as so obviously correct while coming to completely contradictory conclusions. They also, among other factors, help provide the answer to the question of an appropriate remedy.

Appropriate Remedy

Respondents question the propriety of the Judicial Committee acting on this appeal to grant the requested relief on the basis that actions of the convention can only be judged by the convention itself. Our action is appropriate in this case for several reasons.

First, the rules violation was not purely one of “convention rules”. Both the general scheme of incremental Platform change and the specific phrase “a plank” are found in the Bylaws.

Second, the rules violation affected the interests of more than just the delegates present at the time. The rules in question establish a process intended to protect the members generally. Members join an organization because they agree with its purpose; the Platform plays a significant part in defining that purpose, the rules as published in the party's governing documents support that function, and the membership generally depends on that. No organ of the party – not the Executive Committee, certainly not the Judicial Committee, but not even the convention delegates, are the ultimate parties at interest here. The convention is intended to *represent* the party as a whole, but it is not itself the party, and it is appropriate for the Judicial Committee to take into account the rights of the even larger body, the membership.

Third, the nature of the dispute is such that it could recur. While many of the contributory factors were specific to this convention, the primary issue is not. The same question of whether a single simple-majority vote can delete the entire Platform could easily arise at a future convention. The best way to address this for the long term would be for the delegates to amend the Bylaws to be more explicit, but unless and until that happens it is in the interest of avoiding future confusion to have an interpretation of the existing language on record that can be consistently applied.

Fourth, while ordinarily it is best for the members of a deliberative body to be the judges of their own rules, it is possible for this process to break down. Appellants allege a number of deficiencies and errors, beyond the basic one of allowing a simple majority to vote on deleting the whole Platform, and while the Judicial Committee did not rule that any particular one of them would be sufficient by itself to directly invalidate a specific vote, it is clear from a review of the recording that the overall effect was

to create conditions of confusion among delegates about what was and was not proper. Of specific importance was the incorrect instruction provided to the delegates about the possibility of reconsideration. The procedural mechanisms contained in Robert's Rules are intended to work together to allow for correction of error, and the ability of participants to reconsider is an important one. The fact that delegates were told that they did not have this option, and that this misinformation colored the delegates' behavior during a critical point in the proceedings, created uncertainty as to whether even a simple majority, much less any higher proportion, of the delegates present actually favored the declared outcome.

Fifth, the remedy requested is of a type that can easily be implemented without creating new problems. In the case of many kinds of meeting rules violations, coming up with an appropriate remedy would be problematic for the practical reason that there is no meaningful way for the action to be “undone”. Even if we could determine that the presiding officer made an error, or that a vote was not conducted properly, or that the delegates did something that violated the rights of other delegates, it is beyond our ability to “put things back” and let things play out as if this thing had not happened. If we overturned one particular action, we have no way to know how the delegates would have proceeded. We do not have a time machine or a multiverse with which to experiment. But in this case, there is no such problem. The action being challenged happened at what turned out to be for all practical purposes the end of the convention. Even if the outcome of this vote could have affected some other, apparently unrelated, decisions of the convention, all of the other business of the convention had already been concluded – the elections, bylaws amendments, even the endorsement of candidates. The only substantive motions made after the action being appealed were ones that would not have even made sense if the motion to delete the entire Platform had either been ruled out of order at the time or failed, and they also failed, so the outcome would have been the same. This ruling leaves things in a perfectly consistent state, a state that could just as easily have occurred any number of other ways, and does not significantly impede respondents from achieving their goals, as they themselves have explained them, at the next convention.

Respondents attempt to sweep all of these considerations away with a technical argument based on Robert's Rules, which draws a distinction between “bylaws” and “rules of order”. In many cases, this distinction is a useful one, and the guidance provided by Robert's Rules would be applicable. But reality is not always that simple. Our governing documents have not always evolved in strict accordance with the ideal on which specific provisions of Robert's Rules depend. Respondents themselves note that just because something appears in a document titled “bylaws”, that doesn't mean it doesn't really have the “nature” of a “rule of order”, in which case it should be treated that way with respect to the requirement that any objection must be raised and judged during the meeting. But the opposite is also possible. Indeed, it is more than possible – there are a number of other provisions in what we call our “Convention Rules” to which it would make no sense to apply such a restriction. The rule governing the selection of national convention delegates covers some things that do not even happen until after the (state) convention is over. The rule governing endorsements contains a restriction that the candidate must be a Libertarian Party member – it would be unreasonable, and inconsistent with the obvious purpose of such a rule, to say that if the convention mistakenly endorsed a candidate who was not in fact a member, either because they were not given correct information about the candidate or because they somehow forgot about this rule, that it is not possible to remedy the error after the convention is over. An appropriate remedy is not only possible but obvious – treat the action as invalid because the rule was not followed.

In this case, all of these considerations apply. The primary interests at issue here are the rights of the members, not the delegates specifically, the normal procedures for resolving the issue while the convention was still in session broke down, the issue could arise again, and the requested remedy is

straightforward and does not create any inconsistency with any other business conducted by the delegates.

The Platform Going Forward

It cannot be emphasized strongly enough that this ruling was not about the content of the Platform. The LPC's positions on specific national and state issues, the language used to express those positions, and in the long run even the structure of the Platform or whether we should have a Platform at all, are all properly the responsibility of the convention delegates, as representatives of the LPC membership, to decide. The Judicial Committee did not base this ruling on what the language of the Platform should be. This ruling was about process – whether what went on during the 2019 Convention did represent a proper exercise of that responsibility, such that all the members of the LPC could have confidence that their will was properly represented. Our answer is: no, this convention failed to do that.

Those who advocate wholesale rewriting/restructuring/replacement of the LPC Platform say that they represent a significant fraction of the membership. By their own account, the specific course of action that a majority of the Platform Committee said they favored, adopting the existing text of the national Platform, might be supported by a ratio of as much as four to one. This may or may not be so. But if it is so, advocates of such a change will have no trouble “doing it right” at the next convention. If they have enough support for this overall goal and enough votes to adopt that text – or any particular new text – they will also have enough votes to do whatever is necessary to overcome any existing procedural obstacles to doing so. And if the sentiment of the delegates at a future convention really is that the best outcome would be that we have no Platform at all, even that would be within their power, because even if all the appellants' claims relating to a Platform being required by the Bylaws were correct, the delegates have the power to amend those Bylaws.

To those who favor the existing Platform language, we similarly caution that this ruling does not in any way support that view. Individual members of the Judicial Committee naturally have preferences about the Platform as they do about many other things, but they don't all agree on that and that was not the basis of this ruling. The existing rules provide for incremental change within a stable structure, but they do not mandate that either policy positions or presentation style remain unchanged forever – they very clearly were written to allow for the Platform to evolve over time. Those rules can also be changed to allow for more rapid or more drastic change.

It is not within the power of the Judicial Committee to decide what our Platform should be, nor should it be. That is the responsibility of the delegates. All the Judicial Committee can say is “do it properly”.

Concurring Opinion – Jill Pyeatt

Re: the decision of the Judicial Committee on whether deleting the entire Platform at the April 2019 convention was consistent with our Bylaws, I note as follows:

> **Rule 8: Platform Committee**
>
> The Chair of the Platform Committee shall report the Committee's recommendations to the floor, **plank by plank**. The delegates shall vote **on each recommendation separately**. After the delegates have debated and voted on all of the Committee's recommendations, if time permits, any delegate may propose new planks or additional amendments from the floor, which the delegates shall vote on separately.

> **Bylaw 20: Platform**
>
> **Section 1**
>
> The Party Platform shall consist of a number of planks which state the Party position on specific state and national issues.
>
> The Platform may be amended by deletion, substitution, or addition of any plank at any Party convention. The delegates may, by majority vote, delete a plank. The delegates, by a two-thirds vote, but not less than a majority of all registered delegates, may add a new plank, or substitute a new plank for an old plank.

I understand the role of the Judicial Committee to be as follows:

The Judicial Committee review of a Party action or inaction shall be limited to the consistency of that action or inaction in accordance with the governing documents of the Party, including these Bylaws and documents to which they refer.

As a member of the Judicial Committee, based on the above convention rule and bylaw, I voted to reinstate the Platform because I believe the actions from that portion of the convention were not consistent with Rule 8 and Bylaw 20.

Dissenting Opinion – Bob Weber

SUMMARY

It is the job of the Judicial Committee of the Libertarian Party of California to see that clearcut violations of its Bylaws and other governing documents are not violated, and to protect the rights of its members.

No such clearcut violations of the Bylaws or violations of members rights have been shown to have occurred in the vote of the 2019 Convention of the Libertarian Party of California to delete the Party Platform.

Therefore, we vote to sustain the Convention's actions, in dissent from the majority vote of the Judicial Committee to overturn the Convention's vote.

The Judicial Committee of the Libertarian Party of California has voted to overturn the deletion of the State Platform by the 2019 Convention of the LPC. This is an unprecedented action. As far as we know, no Judicial Committee has ever voted to overturn a vote of any State Convention. Given such, the vote to delete would had to have been a clearcut violation of its governing documents. These are: (1) The Party Bylaws and Convention Rules and (2) Robert's Rules of Order, Newly Revised (RONR)

Bylaw 14 Section 3 "The Judicial Committee review of a Party action or inaction shall be limited to the consistency of that action or inaction in accordance with the governing documents of the Party, including these Bylaws and documents to which they refer, with the only exceptions being Judicial Committee duties mandated by these Bylaws, and arbitration of Party contracts that explicitly call for arbitration by the Judicial Committee."

Note that considerations of the wisdom, propriety, how this could better have been done, etc. of the Party's action are outside the scope of the JC's purview. Likewise for the history of the Platform, effect on the Party, motives of Platform Committee which reported out the motion to delete, etc.

But what references do we see in the Bylaws?

Bylaw 20: Platform Section 1 "The Party Platform shall consist of a number of planks which state the Party position on specific state and national issues. The Platform may be *amended* (italics ours) by deletion, substitution, or addition of any plank at any Party convention. The delegates may, by majority vote, delete a plank. The delegates, by a two-thirds vote, but not less than a majority of all registered delegates, may add a new plank, or substitute a new plank for an old plank."

Note that deletion of the *entire Platform* isn't mentioned at all. So the Bylaws are ambiguous on this question. This alone should be sufficient reason for the JC to defer to the vote of the Convention. It is not the job of the JC to engage in hermeneutical analysis of the history of the Party and the Bylaws to determine the question.

But the majority decided somehow that our governing documents forbid a mass deletion by majority vote.

We also note that any delegate who believed that a vote to mass delete the Platform would violate the Bylaws or other governing documents was perfectly free to raise a Point of Order. But no delegate did so. This raises another question as to raising a point of order after the fact. This is reviewable only if the point of order involves a continuing violation of the Party's governing documents or the violation of

the rights of a member of the Party.

We also note in passing that there was much discussion in the JC meeting of how the decision to delete would damage the party, what might have happened, what would have happened, etc. This was entirely out of order and beyond the purview of the Judicial Committee.

In sum, the decision of the Judicial Committee to overturn the vote of the 2019 LPC Convention is entirely without precedent or basis and in and of itself is arguably a violation of the Party's Bylaws.