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**Robert and Jennifer Imhoff-Dousarm vs.
The Libertarian Party of California
August 31, 2019–Initial Response**

Introduction

The issue in this appeal is to “OVERRIDE PASSED MOTION BY THE EXECUTIVE COMMITTEE.” The motion in question was made in Executive Session of the August 10, 2019 Executive Committee 3rd Quarter meeting held at the Avatar Hotel in Santa Clara, California, and was to Suspend the State Central Committee Memberships of Jennifer and Robert Imhoff for “cause.”

Robert and Jennifer Imhoff-Dousarm, henceforth referred to as the “appellants” (referred to as “plaintiffs” in the Notice of Appeal submitted August 23, 2019) request that the Libertarian Party of California (LPC) Judicial Committee (JC) declare the Motion of Suspension, approved by a super majority of the LPC Executive Committee (EC), Out of Order “after the fact,” and therefore declare the action null and void.

Mimi Robson, LPC Chair, will be responding on behalf of the LPC, henceforth referred to as the “respondents” (Honor “Mimi” Robson, Chair – Libertarian Party of California was referred to as the “defendant” in the Notice of Appeal which is inaccurate on its face as the only standing would be to request that a party action be reviewed).

Appellants Grounds for Motion Being Out of Order

The appellants claim that the LPC currently does not have procedures for disciplinary actions in its Bylaws or Operating Procedures Manual and therefore they point to the rules of Order included in Robert’s Rules of Order, Newly Revised 11th Edition–Chapter XX. In the respondent’s initial response, we will not fully address this issue (although it will be easily addressed). This response is to request that the Judicial Committee dismiss this appeal as the appellants have lack of standing.

The rules governing the Libertarian Party of California are as follows and supersede each other in the order listed:

- Bylaws: Prescribe how the organization shall function. They may not be suspended, except for clauses that provide for their own suspension or clauses clearly in the nature of rules of order. The current document is the Bylaws as Amended at the 2019 Convention.

Robert and Jennifer Imhoff-Dousarm vs.
The Libertarian Party of California

- Special Rules of Order: Relate to rules for orderly transaction of business that differ from those contained in the adopted parliamentary authority. Special Rules of Order for the LPC include those listed in the LPC Operating Procedures Manual and the Convention Rules as amended at the 2019 Convention.
- Rules of Order: Relate to orderly transaction of business. These are usually contained in the adopted parliamentary authority, which in this case is the latest edition of *Robert's Rules of Order, Newly Revised* (RONR).
- Standing Rules: Shall be limited to matters of policy and shall define the operating procedures of the Executive Committee. The Party's standing rules are included in the LPC Operating Procedures Manual.

Role of the Executive Committee

Under LPC Bylaw 12, Section 1 (emphasis added): ***The Executive Committee shall be responsible for the control and management of all of the affairs, properties and funds of the Party consistent with these Bylaws, and any resolutions which may be adopted in convention.***

And Section 6: A two-thirds majority of the eligible positions on the Executive Committee shall be required to pass the following: A. ***Removal from office, censure, or suspension of a Party officer, Operations Committee member, Executive Committee member, Libertarian National Committee representative, or County or State Central Committee member, or reinstatement of a County Central Committee member.***

Role of the Judicial Committee / Standard of Review

Under LPC Bylaw 14, Section 3 (emphasis added): ***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.***

At least two Judicial Committee members shall agree to hold a hearing or to consider an appeal. The Judicial Committee may choose to hold hearings in person, by teleconference, or by videoconference.

The JC is under no obligation to hear an appeal unless otherwise directed in the Bylaws. In this matter the only standing that the appellants have is to request an appeal of their suspension. Under LPC Bylaw 5, Section 6 (emphasis added): ***Upon appeal by a County or State Central Committee member, the Judicial Committee shall hold a hearing concerning the suspension. Following the hearing, the Judicial***

Robert and Jennifer Imhoff-Dousarm vs.
The Libertarian Party of California

Committee shall rule either to terminate the membership or to restore the membership.

The appeal at issue was filed by the appellants, however currently neither appellant is a member in **good standing** based upon the motion of suspension that passed at the above mentioned meeting.

Under RONR p. 6, footnote, (emphasis added) ***Members in good standing are those whose rights as members of the assembly are not under suspension as a consequence of disciplinary proceedings** or by operation of some specific provision in the bylaws. A member may thus be in good standing even if in arrears in payment of dues (see pp. 406, 571–72). If only some of an individual's rights as a member of the assembly are under suspension (for example, the rights to make motions and speak in debate), other rights of assembly membership may still be exercised (for example, the rights to attend meetings and vote).

Therefore, although the appellants have the right, under the LPC Bylaws, to appeal their suspension, they have no standing to appeal a Point of Order after the fact. Therefore the respondents request that this appeal be dismissed with prejudice.

Grounds for Request to Dismiss this Appeal with Prejudice

Even if the appellants were Central Committee members in good standing, a point of order can only be made by a voting member of the body in which the action that took place is being considered. In the motion under consideration in the appeal, only members of the LPC EC would have standing to make a point of order on actions taken during a meeting of the committee.

Under RONR P. 263, (emphasis added): *RULES THAT CANNOT BE SUSPENDED. . . **Rules which embody fundamental principles of parliamentary law.** . . . Thus, since it is a fundamental principle of parliamentary law that the right to vote is limited to the members of an organization who are actually present at the time the vote is taken in a regular or properly called meeting (p. 423), **the rules cannot be suspended so as to give the right to vote to a nonmember.****

**In contrast, the rules may be suspended to allow a nonmember to speak in debate.*

Therefore, the appellants wouldn't have had the right or authority to vote **OR** raise a point of order at the EC meeting as they are not members of that body.

And finally, under RONR, there are a limited number of things that can cause an action to be null and void after the fact:

- RONR p. 250–251 –Points of order must generally be raised in a timely manner at the time the breach occurs, and afterwards it is too late to do so. Specified exceptions to the general rule are itemized, and for errors within

Robert and Jennifer Imhoff-Dousarm vs.
The Libertarian Party of California

the exception categories “it is never too late to raise a point of order since any action so taken is null and void.” (more detail on exceptions below)

- RONR p. 347, lines 22–24 –Lack of quorum (more detail in a later section)
- RONR p. 3 line 32–p. 4 line 2 –Violating procedural rules prescribed by local, state, or national law
- RONR p. 343 line 14–p. 344 line 5 –Improper motions as described, but none of the listed categories are applicable to this appeal
- RONR p. 416 –Votes taken when ballots were cast by persons not eligible when those ineligible votes could have affected the outcome
- RONR p. 483 –Actions of a board which alter or conflict with decisions made by the assembly

Parliamentary procedure related appeals to the Judicial Committee essentially raise points of order after the conclusion of a meeting, therefore invoking the questions of timeliness of points of order, and the exceptions to the timeliness requirements. RONR reserves the “null and void” remedies for only the most serious procedural flaws.

Please note that RONR p. 251 provides that:

“The only exceptions to the rule that a point of order must be made at the time of the breach arise in connection with breaches that are of a continuing nature, in which case a point of order can be made at any time during the continuance of the breach. Instances of this kind occur when:

- a) a main motion has been adopted that conflicts with the bylaws (or constitution) of the organization or assembly,*
- b) a main motion has been adopted that conflicts with a main motion previously adopted and still in force, unless the subsequently adopted motion was adopted by the vote required to rescind or amend the previously adopted motion,
- c) any action has been taken in violation of applicable procedural rules prescribed by federal, state, or local law,
- d) any action has been taken in violation of a fundamental principle of parliamentary law (p. 263), or
- e) any action has been taken in violation of a rule protecting absentees, a rule in the bylaws requiring a vote to be taken by ballot, or a rule protecting a basic right of an individual member (pp. 263–64).

In all such cases, it is never too late to raise a point of order since any action so taken is null and void. [...]

Robert and Jennifer Imhoff-Dousarm vs.
The Libertarian Party of California

* Unless the conflict is with a rule in the nature of a rule of order as described on page 17, lines 22–25, in which case a point of order must be timely.”

Please note that in sections (d) and (e) above, page references are given to find listings of the types of things which fall into that category. Clearly those subjects are not at issue here.

In this case, appellants need to demonstrate that their complaints fall into category (a) above to justify granting the requested action. Please note that only a violation of the **bylaws**, not a violation of Special Rules of Order or of the rules of order in RONR qualify for category (a) above. This is plain enough from the wording of (a), but to further emphasize the point, note the asterisked footnote that points of order about a “rule of order” must be timely, that is, raised at the time of the breach rather than after-the-fact.

RONR p. 12-16 addresses distinctions between “bylaws” and “rules of order” in detail. Bylaws are things that cannot be suspended on the fly. Rules of order include both RONR as the parliamentary authority and any “special rules of order” (such as the LPC Convention Rules and the rules listed in the LPC Operating Procedures Manual) adopted to override selected portions of RONR. Note specifically on p. 15 in the description of “rules of order”:

“Such rules relate to the orderly transaction of business in meetings and to the duties of officers in that connection. The object of rules of order is to facilitate the smooth functioning of the assembly and to provide a firm basis for resolving questions of procedure that may arise. In contrast to bylaws, rules of order derive their proper substance largely from the general nature of the parliamentary process rather than from the circumstances of a particular assembly.”

Bylaws are about defining the organizational structure. Rules of order are about the process by which business meetings are conducted. In the appellant’s complaint, they only point to rules of order in RONR, not violations of the Bylaws. In addition, even if the claim of the appellants were that a violation of the Bylaws had occurred, there is no continuing nature of a breach as the Bylaws already give a remedy to the appellants in the form of appealing their membership suspension to the JC.

Per LPC Bylaw 5, Section 5 (emphasis added): ***The Executive Committee shall have the power to suspend a County or State Central Committee membership for failure to maintain all the qualifications of membership established in Section 1, or for cause.*** Notification of the suspension is subject to written appeal within thirty days of notification. Failure to appeal shall terminate the membership. The Executive Committee may reinstate memberships terminated under this section. The term “cause” as used in this section shall include but not be limited to. . .

Robert and Jennifer Imhoff-Dousarm vs.
The Libertarian Party of California

Therefore, based upon the LPC Bylaws it is explicit that the EC has the ability to adopt a motion of membership suspension. If a point of order had been raised during the Executive Session of the EC stating that the motion was out of order I, as Chair, would have called that point out of order. It would have then been up to that member to appeal the ruling from the Chair and it would have been put to a vote. No such point of order was made. I suppose it could be possible that an EC member could attempt to appeal this point of order to the JC after the fact, and it would then be up to the JC if they would agree to hear the appeal.

Initial Conclusion

The appellants have no standing to make the appeal currently under consideration; therefore the respondents respectfully request that the JC dismiss this matter with prejudice. The respondents suggest that if the appellants are seeking a reversal of their suspension they use the rules in place in the Party's governing documents and appeal the suspension under Bylaw 5, Section 6 within the timeframe allowed.

In the event that the JC declines to dismiss this matter an additional response will be provided with additional information regarding the lack of merit in this appeal.

Respectfully Submitted,

Mimi Robson, LPC Chair

K. Brent Olsen, LPC Vice Chair

Steven Haug, LPC Treasurer

Paul Vallandigham, LPC Secretary

Wendy Hewitt, LPC Southern Area Coordinator

Chuck Hamm, LPC At-Large Member