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**Robert and Jennifer Imhoff-Dousarm vs.
The Libertarian Party of California
September 5, 2019–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).

The issue in this appeal is that the appellants claim the procedures followed in the Central Committee Membership suspensions of the appellants during the EC meeting of August 10, 2019 were fatally flawed. Appellants ask you to declare the motion to suspend the memberships null and void by declaring the motion out of order after the fact.

In the initial response of August 31, 2019 the respondents focused on the issues surrounding the appellants’ lack of standing to file this appeal; in that response we spoke on the initial facts that we believe to be germane to this case. We would ask the JC to look at the arguments given in respect to when a point of order can be made after the fact as those arguments are still valid regardless of standing to make the appeal.

In this response, prior to the hearing to be held at 6:30 p.m., September 5, 2019, the respondents will focus on the appellants’ claim that the EC does not have the authority under the LPC Bylaws to suspend Central Committee Memberships per our rules, and therefore the process would point to RONR Chapter XX.

Note: Although some of the following information was already given in the Initial Response, it will be repeated here for clarity.

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.
- 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 (OPM) 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 OPM.

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.*

Background

A complaint was brought to the LPC Chair's attention by the staff of a LPC major donor on August 7, 2019 that required immediate attention; as a meeting of LPC EC was scheduled for August 10, 2019, and the agenda had already been set, the Chair called a meeting of the LPC Operations Committee to discuss this matter (the Operations Committee Report given at the August 10, 2019 meeting is added to this response as an attachment). The Operations Committee has no authority to act on issues of State Central Committee Member disciplinary actions; therefore the purpose of this meeting was to discuss the best approach in bringing this complaint to the EC.

Under LPC Bylaw 13, Section 2 (emphasis added): *The Operations Committee shall have the powers of the Executive Committee between meetings of the Executive Committee, except for the following: . . . D. Suspending or censuring any member of the State or County Central Committees.*

At the Operations Committee electronic meeting a motion was made, seconded, and passed with no objections to add "Committee Investigation" to the Agenda of the upcoming EC Meeting. It was also decided that the members in question, the appellants, were to be notified of the agenda item and made aware of the allegation that would be under consideration; Joshua Smith, Operations Committee Member, sent an email notification to the appellants on Wednesday, August 7, 2019 at 8:57 p.m. stating the allegation, and that the issue would be addressed at the upcoming EC meeting. At 9:01 p.m. Mrs. Imhoff replied to the email stating that they would bring relevant documents to the meeting regarding this complaint (these emails will be sent separately, as requested by the Chair of the JC).

Per the LPC Bylaws a motion for suspension can be made at any Executive Committee meeting, without prior notice as the actual "trial" is held by the LPC JC in the form of a *hearing**, if/when the action of suspension is appealed. However the Operations Committee felt that the appellants should be notified in advance and asked to attend the meeting to insure the EC had all of the facts during their investigation and further to insure that the appellants were part of the process of investigation.

* In most legal definitions a *hearing* comes prior to a *trial*. In RONR there is no mention of a *hearing*, so the final determination is held in a *trial*. In the LPC Bylaws there is no mention of a *trial*, so therefore the final determination is during the *hearing*. Therefore, in this response *hearing* and *trial* will be used interchangeably.

On August 8, 2019 the Chair sent an email with the actions of the Operations Committee taken the evening before (attached at the end of this response). This

email notification was given to the EC, as well as all members on the various email reflector lists, that the agenda item had been added.

Under the OPM, p. 8: ***Operations Committee** The Operations Committee shall justify any vote or action taken in writing within 24 hours of the respective vote or action taken. (05/31/2015)*

Because of the seriousness of the allegations as well as the confidentiality of the investigation, the allegations were not released to anyone outside of the Operations Committee, and the appellants themselves, prior to the EC meeting. At that time the only thing that had been decided was to have the EC investigate this claim; nothing further was formally done prior to the EC meeting on August 10, 2019.

At the EC meeting on August 10, 2019, when the agenda item “Committee Investigation” was reached a motion was made, seconded, and passed with no objections, to enter Executive Session so the complaint could be investigated. The EC entered into Executive Session (after all guests left the room) at 10:34 a.m.

Under RONR p. 95, (emphasis added): ***In any society, certain matters relating to discipline** (61, 63), such as trials, **must be handled only in executive session.***

At the start of the Executive Session, the Chair directed all members to turn off all recording devices as the closed session requires confidentiality.

Under RONR p. 96, 6-7: *A member of a society can be punished under disciplinary procedure if he violates the secrecy of an executive session.*

During the course of the closed meeting a motion was made and approved to ask that the appellants come into the room during Executive Session. The appellants entered the room and answered questions from the EC and were given the opportunity to make statements in regards to the allegations. After the appellants left the room an additional motion was made and approved to call a staff member of the LP Major Donor. Emily Tilford was called to answer questions in regards to the allegations. After fully investigating the complaint a motion was made to suspend the memberships of the appellants for cause, with second, and passed via a roll call vote with all EC members present (the minutes of this closed session will be sent separately, as requested by the Chair of the JC). The EC was in Executive Session for one hour and 44 minutes, then rose from Executive Session and called the public meeting back to order at 12:18 p.m. The actions of the closed session were read into the public record, to become part of the minutes, as follows:

It was moved with second to suspend the State Central Committee Memberships of Robert and Jennifer Imhoff. The motion passed with a vote of 10-2-3 (10 yes, 2 no, 2 expressed abstentions, and the Chair did not vote).

The motion was entered into the public record; however the “charge” was not included. “Cause,” in the Bylaws is vague, however a super majority of the body felt that there was sufficient and compelling *cause* to suspend the memberships after seeing the evidence that was presented as well as giving the appellants’ time to answer questions and make statements.

Under RONR p. 655, 1-11 (emphasis added): ***A society has the right to investigate the character of its members and officers as may be necessary to the enforcement of its own standards. But neither the society nor any member has the right to make public any information obtained through such investigation; if it becomes common knowledge within the society, it should not be revealed to any persons outside the society. Consequently, a trial must always be held in executive session, as must the introduction and consideration of all resolutions leading up to the trial.***

The EC is only involved in the investigation of member misconduct and preferring charges, not the “trial”, and so publically stating the underlying reason for the investigation (the allegation) could raise issues of liability.

Under RONR p. 655, 15-19, (emphasis added): ***Neither the society nor any of its members has the right to make public the charge of which an officer or member has been found guilty, or to reveal any other details connected with the case. To make any of the facts public may constitute libel. A trial by the society cannot legally establish the guilt of the accused, as understood in a court of law; it can only establish his guilt as affecting the society’s judgment of his fitness for membership or office.***

Please note the Executive Committee’s action was to “suspend” the memberships of the two individuals, not to immediately terminate their memberships. The LPC Bylaws gives the EC the authority to suspend memberships with a motion of suspension; the Bylaws require that the suspended members be given the opportunity to appeal the suspension to the JC within 30 days * and request a *hearing* (“trial”). If the appeal is not received in that timeframe the membership is terminated due to the passage of time. If an appeal is received by the LPC JC within the given timeframe the JC is charged with making the final determination to either reinstate or terminate the membership after holding a *hearing* (“trial”).

Note: Much of the above was included in the August 13, 2019 public statement by the Chair. This statement was sent out via email to all members of the LPC Google groups, as well as posted on Facebook; the Chair of the JC commented on the Facebook post. The emails, as well as the Facebook comments, are included as attachments to this response.

* At the 2019 LPC convention the number of days was amended from 15 to 30 to better reflect the time frame given in RONR.