

## MEMORANDUM

**TO:** Libertarian National Committee

**FROM:** Oliver Hall

**DATE:** November 9, 2015

**SUBJECT:** Special Counsel's Report

### Introduction

This report summarizes my work as Special Counsel to the Libertarian National Committee since I assumed that position on October 1, 2015. The report is a privileged attorney-client communication, but only relates facts, and not legal advice. As such, it may be appropriate for sharing with a wider audience, including members of the Libertarian Party, at your discretion.

### General

As Special Counsel to the LNC, I have reviewed documents and correspondence, responded to questions, and provided legal advice on a variety of matters, including the following: reviewing contracts for petition circulators in Oklahoma; interviewing and advising Oklahoma petition circulators concerning interference with their lawful petitioning activities; compiling facts and evidence for ACLU of Oklahoma regarding such interference and conducting follow-up thereto; and researching issues relating to ballot access in Pennsylvania in 2016 and advising LNC regarding the status of state law following the recent decision in *Constitution Party of Pa. v. Cortes* (detailed below).

### Litigation

*Constitution Party of Pa. v. Cortes* – On July 23, 2015, the federal district court in Philadelphia held that Pennsylvania's ballot access scheme for minor parties is unconstitutional as applied. Specifically, the court held that 25 P.S. § 2911(b), the provision that requires minor parties to submit nomination petitions containing a specified number of signatures, and 25 P.S. § 2937, the provision that authorizes private parties to challenge the sufficiency of those nomination petitions, are unconstitutional as applied to the plaintiffs, including the Libertarian Party of Pennsylvania. The defendants are the Pennsylvania elections officials charged with enforcing the provisions. They have appealed the district court decision to the Third Circuit Court of Appeals. In response, I prepared and filed a motion for summary affirmance, which was denied. We are now awaiting the filing of the defendants' opening brief, which is due on December 2, 2015. (My work on this case is outside the scope of my representation of the LNC; this synopsis is included here for informational purposes, because the litigation impacts the LNC's interests.)

*Stein v. Secretary of State of Alabama* – In November 2014, after Gary Sinawski passed away, I traveled to Montgomery, Alabama and argued this case before the Court of Appeals for the 11th Circuit. The plaintiffs were a coalition of minor parties and their supporters, including the Libertarian Party of Alabama, who challenged the constitutionality of Alabama's early petitioning deadline for presidential candidates. The district court granted summary judgment against the plaintiffs after excluding their evidence for failure to comply with a local procedural rule. On appeal, the 11th Circuit requested supplemental briefing on the sufficiency of the evidence and other issues, which I prepared and submitted. The 11th Circuit then affirmed the lower court decision. Thereafter, the defendants requested payment of more than \$7,000 in litigation costs that were taxed against the plaintiffs. We requested that the defendants waive these costs, but they have not yet agreed to do so.

**Other Matters:** In addition to the foregoing cases, the LNC (and/or its affiliates) is party to the following matters, which are ongoing: *Arizona Libertarian Party v. Reagan*; *Libertarian Party of Ohio v. Husted*; *Libertarian Party of Illinois v. Illinois State Board of Elections*; *Libertarian National Committee v. Holiday*; *Libertarian Party of Arkansas v. Martin*; *Gary Johnson v. Commission on Presidential Debates*; and *Libertarian Party of New Hampshire v. Gardiner*. I am in the process of contacting the lawyers representing the LNC or its affiliates in these matters, and informing them that I will be responsible for coordinating with them as the litigation progresses. I will then include a status report for these matters in each Special Counsel Report on a continuing basis.

### **Conclusion**

I look forward to discussing this report with the LNC during its meeting on November 14, 2015. In addition, should you have questions or need further information, please contact me at 617-953-0161 or [oliverbhall@gmail.com](mailto:oliverbhall@gmail.com).