

MEMORANDUM

TO: Libertarian National Committee

FROM: Oliver Hall

DATE: February 19, 2016

SUBJECT: Special Counsel's Report

Introduction

This report summarizes my work as Special Counsel to the Libertarian National Committee since I last submitted a report on November 9, 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 as needed or requested.

In particular, I researched and resolved queries relating to the following: the status of the LNC as a political committee registered with the Federal Election Committee; the potential liability of the LNC arising from an event held by an unaffiliated entity called LPEX; and compliance with ballot access statutes in Connecticut, Oklahoma, Virginia and South Dakota.

I also assisted various state parties' efforts to obtain ballot access in 2016. In Maine, I obtained counsel and negotiated an agreement for the filing of litigation challenging that state's recently enacted ballot access requirements for new parties, as detailed below. In Oklahoma, I advised petition circulators concerning interference with their lawful petitioning activities, coordinated our response with the ACLU of Oklahoma, and filed a formal complaint concerning such interference with the Attorney General of Oklahoma. In Pennsylvania, I obtained formal guidance regarding the Secretary of State's interpretation of state election law following our successful litigation in *Constitution Party of Pa. v. Cortes* (see below). And in Virginia, I requested formal guidance from the State Board of Elections as to how minor parties can ensure compliance with the statute requiring that petitions satisfy certain distribution requirements, given that the boundaries of the state's congressional districts are subject to change in pending litigation.

Finally, I reviewed and approved multiple contracts, including those executed or to be executed with the following: the eventual Libertarian Party presidential candidate; an affiliate development consultant; a membership renewal consultant; a fundraising and membership

recruitment consultant; a graphic design and branding consultant; and petition circulators in Connecticut, Oklahoma and South Dakota.

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. The appeal has been fully briefed and oral argument, if any, will take place in April. (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.)

Level the Playing Field v. Federal Election Committee, No. 1-15-cv-01397: This case challenges the FEC’s denial of an administrative complaint against the Commission on Presidential Debates. Plaintiffs’ counsel is Alexandra Shapiro, Shapiro Arato LLP: ashapiro@shapiroarato.com; 212-257-4881

Libertarian National Committee v. Federal Election Committee, No. 16-cv-0121: This case challenges the FEC’s treatment of a bequest from Joseph Shaber, deceased, to the LNC, which imposes an annual limit on the amount of the bequest that may be distributed to the LNC. Plaintiffs’ counsel is Alan Gura, Gura & Possessky: alan@gurapossessky.com; 703.835.9085.

Libertarian Party of CT v. Merrill, No. 3-15-cv-01851: This case challenges Connecticut’s ban on out of state petition circulators. On January 27, 2016, the Court granted our motion for preliminary relief and enjoined the prohibition. We are now working to ensure the state party is conducting its 2016 petition drive and using out of state circulators, which will support the claim for permanent relief when the Court rules on it later this year.

Libertarian Party of Maine v. Dunlap: This case challenges Maine’s statute requiring new parties to submit 5,000 registered members in December of the year prior to an election year, as well as related restrictions. The Complaint and a motion for preliminary injunction were filed in January 2016, and a hearing on the motion is scheduled for March. Plaintiffs’ counsel is John Branson of Branson Law Office: jbranson@bransonlawoffice.com; 207-780-8611.

Other Matters: In addition to the foregoing cases, the LNC (and/or its affiliates) is party to the following matters, which are ongoing:

Libertarian Party of Ohio v. Husted, No. 2:13-cv-953 (S.D. Oh. Oct. 14, 2015) – this case raised several issues, including a challenge to the state’s ban on out-of-state petition circulators, and a claim that a financial disclosure requirement imposed on the party’s circulators had been selectively enforced. The court granted plaintiffs summary judgment on their challenge to the out-of-state circulator ban, and held that selective prosecution claim requires more evidence. The parties are currently briefing that issue following additional discovery. Plaintiffs’ counsel is Mark Brown: mbrown@law.capital.edu.

Libertarian Party of Illinois v. Illinois State Board of Elections, No. 1:12-cv-2511 (N.D. Ill.) – This case challenges Illinois’ unique statute that requires new parties, but not old parties, to run a full slate of candidates, as well as the state’s June petitioning deadline. The original judge denied the state’s motion to dismiss in September 2012, but the case was transferred several times. The current judge has delayed issuing a final decision several times, most recently on November 2, 2015. Based on the prior decision, it appears the full slate requirement may eventually be struck down, but the June petition deadline upheld. Plaintiffs’ counsel was Gary Sinawski, with local counsel William Malan, (312) 415-0800; billm@malanlaw.com.

Libertarian National Committee v. Holiday, No. 3:14-cv-00063 (E.D. Ky.) – This case challenges a debate requirement limiting participation to candidates with “a realistic chance of winning” the election. It also requires that the candidate have raised at least \$100,000 for the campaign. On October 11, 2014, the court denied the plaintiff candidate injunctive relief that would permit him to participate in the debate. In September 2015, the judge ordered that there be a trial, and the state answered the Complaint. On February 5, 2016, the Court entered an order granting in part the Defendants’ motion for partial dismissal on the pleadings. Plaintiffs’ counsel is Chris Wiest: chris@cwiestlaw.com; 859-486-6850.

Libertarian Party of Arkansas v. Martin, No. 4:15cv-635 (E.D. AR.) – This case was filed on October 14, 2015. It challenges the state requirement that new or minor parties must choose all of their nominees except presidential nominees by November of the year before the election. Plaintiffs’ counsel is Jim Linger: (918) 585-2797; bostonbarristers@tulsacoxmail.com

Gary Johnson v. Commission on Presidential Debates, No. 1:15cv-1580 (D.D.C.) – This case was filed on September 28, 2015, and asserts antitrust claims under the Sherman and Clayton Acts. It asserts that the Commission on Presidential Debates is a commercial enterprise and is prohibited from holding debates and excluding all but the major party candidates. Plaintiffs’ counsel is Bruce Fein: (202) 465-8727; bruce@feinpoints.com

Libertarian Party of New Hampshire v. Gardiner, No. 15-2068 (1st Cir) – This case was filed in 2014 to challenge the law prohibiting a party from circulating a petition during and odd year. The plaintiffs lost in the district court and filed their notice of appeal on September 14, 2015. The appeal is currently being briefed. Plaintiffs’ counsel is the ACLU of Connecticut.

Libertarian Party of Kentucky v. Grimes, No. 3:15-cv-86: This case challenges Kentucky's requirement that minor political parties submit separate petitions to obtain ballot access for each of their candidates, unless the party's presidential candidate appeared on the ballot in the previous election and received more than 2 percent of the vote (in which case, the party may place its entire slate of candidates on the ballot for the next four years). Plaintiffs filed a motion for preliminary injunction in February 2016, which remains pending. Plaintiffs' counsel is Chris Wiest: chris@cwiestlaw.com; 859-486-6850.

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.

Additional Matters

LNC representative James Willard Lark contacted me regarding the advisability of establishing a legal internship program for the LNC. I stated that I would present the proposal to the LNC for further discussion.

Conclusion

I look forward to discussing this report with the LNC during its meeting on February 19, 2016. Should you have questions or need further information prior to that time, please contact me at 617-953-0161 or oliverbhall@gmail.com.