

MEMORANDUM

TO: Libertarian National Committee
FROM: Oliver Hall
DATE: December 9, 2017
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 August 18, 2017. 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 and services on a variety of matters as needed or requested. In particular, I researched and resolved queries relating to: the party status of the Libertarian Party of New Mexico; the state's use of outdated voter registration forms in Oklahoma; and obtaining debate-staging organization's compliance with federal campaign finance laws and regulations. I also provided the following services: researched options and negotiated terms for establishing escrow accounts for LNC and Libertarian Party of New Mexico; drafted contract terms for A/V contractor to Libertarian National Convention; drafted contract for subletting of rooms at Libertarian National Convention; drafted contract for designation of memorial room in honor of donor; and sent a cease and desist request to group using Libertarian Party logo.

I provided litigation assistance or reviewed and approved filings in the following actions involving the LNC or a state party affiliate:

- *Husted v. APRI*, No. 16-980: coordinated revisions to and filing of an amicus brief submitted in case accepted for review by Supreme Court;
- *Libertarian National Committee v. Federal Election Commission*, No. 1:16-CV-0121-BAH: reviewed and approved brief submitted in support of certification of questions;
- *Level the Playing Field, et al. v. Federal Election Commission*, No. 15-cv-1397 (TSC): reviewed and approved summary judgment brief;
- *Libertarian National Committee v. Holiday*: reviewed District Court's opinion granting defendants summary judgment and provided counsel on advisability of appeal.

Finally, I drafted or reviewed and approved multiple contracts, including those executed with the following: fundraising and membership recruitment contractor; back office technology contractor; candidate recruiting contractor; and campaign advisor contractor.

Litigation

Arizona Libertarian Party v. Reagan, No. 2:16-cv-01019: This case challenges Arizona's newly enacted law that drastically increased signature requirements for Libertarian Party candidates seeking access to AZLP's primary ballot. It requests declaratory and injunctive relief. The Plaintiffs sought preliminary relief in time for the 2016 election, which was denied. Thereafter, the parties conducted discovery and filed cross-motions for summary judgment. On July 10, 2017, the District Court granted summary judgment to the state. The Plaintiffs have appealed to the 9th Circuit and submitted their opening brief. Briefing on the appeal will be complete in January 2018, with oral argument likely to follow shortly after that. (I represent the Plaintiffs outside the scope of my representation of the LNC.)

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 appealed the district court decision to the Third Circuit Court of Appeals. The Third Circuit affirmed on June 2, 2016. On July 1, 2016, the District Court entered an order significantly lowering the signature requirements for minor party nomination petitions, and enjoining the assessment of costs against candidates who defend their nomination petitions when challenged pursuant to Section 2937. However, the Court also imposed county-based signature distribution requirements, which are likely unconstitutional under *Moore v. Ogilvie*, 394 U.S. 814 (1969). We have therefore appealed this limited aspect of the Court's order. Briefing was completed in December 2016, and oral argument, was held in March of 2017. (I represent the Plaintiffs outside the scope of my representation of the LNC.)

Cowen v. Kemp, No. _____ (N.D. Ga. Nov. 21, 2017) – This case challenges the Georgia law requiring that candidates for U.S. House submit nomination petitions with signatures equal in number to 5 percent of the registered voters in the last election. No candidate has ever complied with that requirement since the law was enacted in 1943. Plaintiffs are individual voters and the Libertarian Party of Georgia. Plaintiffs' counsel is Brian Sells: (404) 480-4212; bryan@bryansells.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. The Defendants filed a motion to dismiss, which was granted in August. The Plaintiffs appealed to the Court of Appeals for the D.C. Circuit, No. 16-7107, and that Court affirmed on August 29, 2017. The Supreme Court granted Plaintiffs an extension of time to file their petition for certiorari. It is now due on December 27, 2017. Plaintiffs' counsel is Bruce Fein: (202) 465-8727; bruce@feinpoints.com.

Level the Playing Field v. Federal Election Committee, No. 1-15-cv-01397: This case challenges the FEC's failure to act upon, and constructive denial of, an administrative complaint against the Commission on Presidential Debates. On February 1, 2017, the Court granted Plaintiffs' motion for summary judgment and denied Defendant's motion. The Court remanded the case to the FEC with instructions to reconsider the evidence and allegations and issue a new opinion within 60 days. The Court also ordered the FEC to reconsider Plaintiffs' petition for rulemaking and enter a new decision within 60 days. In March 2017, the FEC issued a new decision that upheld its prior position. The case is now back before the District Court, and the Plaintiffs have filed a supplemental complaint. Briefing on the FEC's motion to dismiss the supplemental complaint was complete in August 2018. 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. The FEC filed a motion to dismiss, which the Court denied on January 3, 2017. The parties have taken discovery. In September 2017, Plaintiff filed a motion requesting that the District Court certify certain questions of law to the D.C. Circuit for decision. Plaintiffs' counsel is Alan Gura, Gura & Possessky: alan@gurapossessky.com; 703.835.9085.

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 September 29, 2017, the Court entered an order granting the Defendants' motion for summary judgment. Plaintiffs' appeal is now pending before the 6th Circuit. Plaintiffs' counsel was Chris Wiest: chris@cwiestlaw.com; 859-486-6850. Robert Winter is counsel of record on appeal: robertawinterjr@gmail.com.

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. The Court entered a decision on July 15, 2016, which held that the state can't require the party to

hold its nominating convention before the major parties hold their primaries. The Court denied the state's motion for reconsideration in September 2016. The state appealed to the 8th Circuit. While the appeal was pending, the Legislature amended the challenged law to allow minor parties to hold their nominating conventions on the day of the major parties' primary election. On November 30, 2017, the 8th Circuit entered a decision holding that the amendment to the challenged statute rendered the decision below moot. It therefore vacated that decision, but upheld the award of attorney's fees and costs to Plaintiffs. Plaintiffs' counsel is Jim Linger: (918) 585-2797; bostonbarristers@tulsacoxmail.com.

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 District Court ruled in the Plaintiffs favor, and the state appealed to the 7th Circuit in May 2016. The appeal is No. 16-1667. Briefing was completed on the appeal in February 2017. On September 22, 2017, the 7th Circuit affirmed the District Court's decision. Plaintiffs' counsel was Gary Sinawski, with local counsel William Malan, (312) 415-0800; billm@malanlaw.com. David I. Schoen handled the appeal: 2800 Zelda Road, Suite 100-6, Montgomery, AL 36106;(334) 395-6611.

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). On July 8, 2016, the District Court entered an order granting summary judgment to the Defendants. The Plaintiffs filed an appeal and requested an expedited schedule. On July 14, 2016, the Court of Appeals for the Sixth Circuit granted Plaintiffs' motion to expedite, and ordered that all briefing in the appeal be completed by July 28, 2016. The Sixth Circuit affirmed. Plaintiffs filed a petition for certiorari in early 2017. The Supreme Court denied the petition in May 2017. Plaintiffs' counsel is Robert A. Winter, Jr., P.O. Box 175883, Fort Mitchell, Kentucky 41017;(859) 250-3337; robertawinterjr@gmail.com.

Conclusion

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