

MEMORANDUM

TO: Libertarian National Committee

FROM: Oliver Hall

DATE: May 26, 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 February 19, 2016. 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: negotiation strategy relating to a proposed contract with the eventual Libertarian 2016 presidential ticket; participation of the LNC in an amicus brief filed in support of the Defendant-Appellant in *United States v. Houston*, No. 14-5800 (6th Cir. 2014); strategy for obtaining ballot access in Pennsylvania in 2016; acceptance by the LNC of an annuity left by a deceased supporter; and compliance with ballot access statutes in Connecticut, Ohio, Pennsylvania, South Dakota, Vermont and Virginia.

I also provided litigation assistance in several pending actions involving the LNC or state party affiliates. In *Libertarian Party of Maine v. Dunlap*, I coordinated with counsel of record and reviewed and provided comments on all filings. In *Libertarian Party of CT v. Merrill*, I assisted counsel of record in developing the facts necessary to support claims for prospective relief. And in *Libertarian National Committee v. Holiday*, I personally served subpoenas on a Washington, D.C.-based defendant.

Finally, I reviewed and approved multiple contracts, including those executed or to be executed with the following: the Rosen Centre Hotel; Zocalo web developer; iSideWith email marketing; photographer for 2016 convention; Connecticut petition circulators; Illinois petition circulators; Ohio petition circulators; Pennsylvania petition circulators; Comfort Suites Hotel; email outreach contractor; Audio-Video contractors for 2016 convention; and the Hyatt Regency New Orleans.

Litigation

Arizona Libertarian Party v. Reagan, No. 2:16-cv-01019: This case challenges Arizona's newly enacted law that drastically increases signature requirements for Libertarian Party candidates seeking access to AZLP's primary ballot. It requests declaratory and injunctive relief. The Plaintiffs filed an emergency motion for preliminary injunctive relief in May 2016, which the Court denied without reaching the merits on May 27, 2016. The parties must now advise the Court with respect to a litigation schedule to govern further proceedings. (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 have appealed the district court decision to the Third Circuit Court of Appeals. The appeal has been fully briefed and oral argument took place on April 12, 2016.

In February 2016, Secretary Cortes advised that he would continue to enforce Section 2911(b), notwithstanding the final judgment declaring it unconstitutional. We filed an emergency motion requesting the District Court to enjoin Secretary Cortes from doing so, and ordering him to place the Libertarian Party candidates on the ballot in 2016. The District Court denied the motion on May 19, 2016, holding that the Court of Appeals should decide the matter. We filed a new emergency motion with the Court of Appeals the same day. That motion is pending. (I represent the Plaintiffs outside the scope of my representation of the LNC.)

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 have filed a motion to dismiss, which is pending. 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. The Plaintiffs filed an Amended Complaint in January 2016, to reflect that the FEC formally denied the administrative complaint in December 2015. They moved for summary judgment on April 6, 2016. The case has generated some interest, with amicus briefs filed by the Commission on Presidential Debates and the Independent

Voters Project. 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 was fully briefed on May 20, 2016, and remains pending. 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 February 5, 2016, the Court entered an order granting in part the Defendants' motion for partial dismissal on the pleadings. Plaintiffs are currently in the process of taking discovery. 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. The parties are currently taking discovery. In April 2016, the Defendants sent the Plaintiffs an extensive request for production of documents and interrogatories encompassing a wide range of communications relating to nomination procedures and other internal party matters. Plaintiffs' counsel is Jim Linger: (918) 585-2797; bostonbarristers@tulsacoxmail.com.

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 Illinois v. Illinois State Board of Elections, No. 1:12-cv-2511 (N.D. Il.) – 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 in May 2016. The appeal is pending, with briefing to be completed by July 15, 2016. Plaintiffs' counsel was Gary Sinawski, with local counsel William Malan, (312) 415-0800; billm@malanlaw.com.

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.

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 was held in March. The Court originally denied the motion for preliminary injunction, but we filed a motion for reconsideration, which was granted. The Court concluded the state party has shown a likelihood of success on the merits, and ordered the Secretary of State to credit it with the 4,513 voters it had submitted as registered members, and to allow the party until July 12, 2016 to register 487 new members. Plaintiffs' counsel is John Branson of Branson Law Office: jbranson@bransonlawoffice.com; 207-780-8611.

Libertarian Party of Ohio v. Husted, No. 2:13-cv-953 (S.D. Oh. Oct. 14, 2015) – this case raises several claims, including an equal protection challenge to the state's statute requiring "new" parties (including LPO) to submit a petition with 30,000 signatures in order to re-qualify as a party; and a claim that a financial disclosure requirement imposed on the party's circulators had been selectively enforced. In October 2015, the court granted the defendants summary judgment on the challenge to the new party qualification statute, and held that the selective prosecution claim requires more evidence. On May 20, 2016, the court granted the defendants summary judgment on the selective prosecution claim. On May 23, 2016, LPO filed an emergency request for stay a stay and relief from the District Court judgment with the Sixth Circuit Court of Appeals. That motion is pending. Plaintiffs' counsel is Mark Brown: mbrown@law.capital.edu.

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.

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.