

MEMORANDUM

TO: Libertarian National Committee

FROM: Oliver Hall

DATE: July 14, 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 May 26, 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 and services on a variety of matters as needed or requested. In particular, I researched and resolved queries relating to the following: negotiation strategy regarding proposed joint operating and fundraising agreements with the Johnson/Weld Campaign; Virginia labor law relating to independent contractors in connection with retainer of volunteer coordinator consultant; and audit of LNC by Frye and Company accountants. I also provided the following services: drafted contract between LNC and administrator of LNC's new Instagram account; drafted renewal contract for LNC Executive Director Wes Benedict and negotiated final terms; attended national convention in Orlando and initiated contract negotiations with Johnson/Weld Campaign; revised proposed Joint Operating Agreement with Johnson/Weld Campaign and negotiated terms with Johnson/Weld Campaign counsel; reviewed Johnson Victory Fund joint fundraising agreement, researched campaign finance law, and provided recommendations regarding LNC's possible participation; and reviewed promotional materials for Las Vegas fundraising event.

I also provided litigation assistance in several pending actions involving the LNC or state party affiliates. I reviewed and provided comments on the amicus brief the LNC and Libertarian Party of Kentucky filed in *Libertarian Party of Ohio v. Husted*, No. 16-3537 (6th Cir.). I coordinated with local counsel regarding the Libertarian Party of Maine's successful registration drive. I also reviewed the decision in *Libertarian Party of Kentucky v. Grimes* and provided recommendations regarding a potential appeal.

Finally, I reviewed and approved multiple contracts, including those executed or to be executed with the following: non-disclosure agreement with data and technology firm; retainer agreement for media and marketing consultant; Hyatt Regency New Orleans; and petition

circulator contracts for Alabama, the District of Columbia, Massachusetts, New Hampshire, New York and Pennsylvania.

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 Plaintiffs therefore filed a new motion for preliminary injunction, which does not request emergency relief. The Court held a hearing on that motion on July 12, 2016, and has indicated that it will decide the motion as soon as possible. (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. (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 have taken 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. The Court held a hearing in the case on July 11, 2016, and indicated that it would enter a decision by July 18, 2016. 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). 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. 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. The Secretary of State of Maine has now certified that the Libertarian Party of Maine has registered more than enough members to be a ballot-qualified political party in the 2016 election cycle. 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. LPO has appealed the decision. Briefing on the appeal was completed on July 11, 2016, and the appeal remains 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 pending. Plaintiffs' counsel is the ACLU of Connecticut.

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.