

MEMORANDUM

TO: Libertarian National Committee

FROM: Oliver Hall

DATE: April 14, 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 December 10, 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 compliance with ballot access laws in Minnesota, Montana, Ohio, among others.

I also provided the following services: drafted and filed an amicus brief in *Wilson v. Sessions*, No. 14-15700 (9th Cir. August 31, 2016) (attached) (with research support from Joshua Katz); researched potential nominees to serve as FEC Commissioners, conducted initial outreach and drafted letter requesting appointment of a Libertarian to the FEC; drafted letter requesting party status on behalf of Tennessee state party; negotiated settlement with 2016 petition circulator; reviewed *Wilson v. Lynch* amicus brief and litigation update fundraising letters; reviewed employee termination letter; consulted with LNC Ballot Access Committee.

I provided litigation assistance in several pending actions involving the LNC or a state party affiliate, including:

- consulted on briefs in *State ex rel Fockler v. Husted*, original mandamus action in Ohio Supreme Court, seeking recognition of Ohio LP based on the votes received by the “independent” campaign of Johnson-Weld;
- consulted on the draft petition for certiorari in *Libertarian Party of Kentucky v. Grimes*;
- consulted on settlement negotiations in *Libertarian Party of Maine v. Dunlap*;
- analyzed vulnerability of Minnesota ballot access statute to constitutional challenge.

Finally, I drafted or reviewed and approved multiple contracts, including those executed with the following: fundraising and development consultant; membership renewal consultant;

fundraising and membership recruitment consultant; systems and process consultant; petition circulators in Arkansas and Ohio; and Blackbaud Solutions.

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 sought preliminary relief in time for the 2016 election, which was denied. Thereafter, the parties conducted discovery. Plaintiffs filed our motion for summary judgment on March 31, 2017. Defendants have 30 days to file theirs, and a hearing on the motions is scheduled for June. (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.)

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. The appeal is No. 16-7107. 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 30 days. The Court also ordered the FEC to reconsider Plaintiffs' petition for rulemaking and enter a new decision within 60 days. 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. 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 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. This will permit the party to hold its convention in May 2018. 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 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. The Sixth Circuit affirmed. Plaintiffs filed a petition for certiorari in early 2017, and submitted a Reply to the Respondent's Opposition in April 2017. Plaintiffs' counsel is Robert A. Winter, Jr., P.O. Box 175883, Fort Mitchell, Kentucky 41017; (859) 250-3337; robertawinterjr@gmail.com.

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 have negotiated a final settlement with the state, pursuant to which Plaintiffs dismissed their claims in exchange for the Secretary of State's support for legislative reform. Two reform bills are currently winding their way through the legislative process. 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 appealed, the Sixth Circuit affirmed. LPO filed its petition for certiorari on October 26, 2016. The petition was denied. Plaintiffs' counsel is Mark Brown: mbrown@law.capital.edu.

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.