

MEMORANDUM

TO: Libertarian National Committee

FROM: Oliver Hall

DATE: April 20, 2018

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 9, 2018. 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 several litigation proposals that the LNC received; the legal issues relating to a disciplinary complaint filed against an LNC officer, and my investigation thereof; and the legal issues relating to a school's denial of a Libertarian student group's effort to organize itself on campus.

I also provided the following services:

- Negotiated with bank and prepared materials to establish escrow accounts for deceased donor's bequest;
- Researched factual and legal issues regarding Delaware state party's status and consulted with LNC officers and executive director to develop and execute LNC's response;
- Coordinated the Chair's response to media inquiries relating to pending litigation;
- Reviewed and evaluated proposed litigation challenging the size of the U.S. House and communicated with plaintiff's counsel;
- Researched issues and evidence and provided legal analysis and recommendations relating to disciplinary complaint filed against LNC officer;
- Coordinated effort to secure inclusion of Pennsylvania Libertarian candidate for U.S. House in televised debate, including preparation of demand letter;
- Reviewed FEC complaint filed against Florida state party and provided legal analysis and recommendations.

Additionally, I provided litigation assistance or reviewed and approved filings in the

following actions involving the LNC or a state party affiliate:

- *Libertarian National Committee v. Holiday*: reviewed and provided comments on draft of LNC's opening brief on appeal to 6th Circuit;
- *Cowen v. Kemp*, No. 1:17-cv-04660 (N.D. Ga. Nov. 21, 2017): coordinated with counsel for Georgia state party affiliate regarding request for evidence;
- *Ryan Frazier and Libertarian Party of Colorado v. Williams*, No. 171196 (Sept. 11, 2017): coordinated preparation and filing of amicus brief in support of petition for certiorari;
- *Challenge of Susan Thibedeau against Primary Nomination Petitions of Cody R. Blackburn*: conducted legal research and consultation on behalf of pro bono attorney John Branson in successful defense of Maine state legislative candidate's primary election nomination petitions;

Finally, I drafted or reviewed and approved multiple contracts, including those executed with the following: hotel for 2020 party convention; Tennessee petition drive contractor; Ohio petition drive contractor; and Fidelity Vanguard 401k agreement.

Litigation

Arizona Libertarian Party v. Reagan, No. 2:16-cv-01019 (D. Ariz. April 12, 2016), No. 17-16491 (9th Cir. July 21, 2017): 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 briefing on the appeal was completed in April 2018. Oral argument is likely to follow in early summer. (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 therefore appealed this limited aspect of the Court's order. The Third Circuit once again ruled in our favor on March 9, 2017, vacating the District Court's order and remanding for further proceedings. On remand, the District Court agreed to our proposal that it delete the county-based signature requirements from its July 1, 2016 order, but otherwise leave that order unchanged. The District Court did so, entering a new order to that effect on February 1, 2018. (I represent the Plaintiffs outside the scope of my representation of the LNC.)

Cowen v. Kemp, No. 1:17-cv-04660 (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. The Defendant filed an Answer to the Complaint in February 2018, and the parties are currently taking discovery. Discovery ends July 9, 2018. Plaintiffs' counsel is Brian Sells: (404) 480-4212; bryan@bryansellsllaw.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 denied certiorari on February 20, 2018. 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. The parties have filed cross-motions for summary judgment, and briefing was completed on the motions in November 2017. 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. In October 2017, the FEC filed a new motion to dismiss. Both motions are currently 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.), No. 17-6216 (6th Cir. Oct. 29, 2017) – 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 District 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. Briefing was completed on the appeal in March 2018. Plaintiffs' counsel was Chris Wiest: chris@cwiestlaw.com; 859-486-6850. Robert Winter is counsel of record on appeal: 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.