

MEMORANDUM

TO: Libertarian National Committee

FROM: Oliver Hall

DATE: December 1, 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 October 2, 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 involving: registered Libertarian seeking position as county election inspector in Michigan; Wyoming law governing election recounts; exclusion of Libertarian candidate from special election in Georgia; and issues arising under federal labor law.

I also provided the following services:

- Provided legal guidance and/or representation to Libertarian candidates seeking inclusion in debates in races for U.S. Senate in Pennsylvania; U.S. Senate in Texas; U.S. House in North Carolina; U.S. House in Ohio; U.S. House in Pennsylvania; Governor in Georgia; and Governor in Iowa;
- Assisted as supporting counsel to Mark Brown in administrative proceeding before Federal Election Commission on behalf of Libertarian Party of Ohio;
- Assisted as supporting counsel to Mark Brown in administrative proceeding before Ohio Elections Commission on behalf of gubernatorial candidate;
- Provided background information and materials to support preparation of fundraising letter based on LNC efforts to include Libertarian candidates in debates;
- Reviewed filings, researched case law and advised LNC with respect to request that it join amicus brief in support of petition for certiorari in *Utah Republican Party v. Cox*;
- Reviewed 6th Circuit decision in *Libertarian National Committee v. Holiday*, No. 17-6216, and provided recommendations regarding legal options;
- Consulted with Libertarian Party of Maryland Chair regarding potential ballot access litigation and provided advice and research support to lead counsel.

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 spring of 2019. (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. Plaintiffs' counsel is Brian Sells: (404) 480-4212; bryan@bryansellslaw.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. On June 29, 2018, the District Court granted Plaintiff's motion and denied the FEC's motion. The District Court certified the questions of law to the D.C. Circuit. The FEC also filed a renewed motion to dismiss in September 2018, which Plaintiff opposed. Oral argument was held before the D.C. Circuit on November 30, 2018. 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. Plaintiff appealed to the 6th Circuit, which affirmed in a decision entered on November 2, 2018. Plaintiffs’ counsel is 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.