

MEMORANDUM

To: Libertarian National Committee

From: Oliver Hall

Date: February 18, 2019

Re: Litigation on Behalf of Libertarian Party of Maine

This memorandum explains the basis for proposed litigation to be filed on behalf of the Libertarian Party of Maine (“LPME”). The goal of the lawsuit would be to reinstate LPME as a qualified party and re-enroll its 5,000-plus former members as registered Libertarians.

Factual Background

Under Section 303 of the Maine Election Code, a new party can qualify for the ballot by enrolling 5,000 voters within one year of filing a declaration of intent. In 2016, LPME filed a lawsuit challenging various provisions of Maine law relating to this process. LPME won a preliminary injunction, pursuant to which it was recognized as a qualified party in the 2016 general election, by virtue of having at least 5,000 registered Libertarian voters. The case was ultimately settled. Thereafter, to retain its status as a qualified party, LPME was required to enroll at least 10,000 Libertarian voters in total by the second general election after it qualified – *i.e.*, the 2018 general election. LPME failed to register 10,000 voters in time. As a result, it has been disqualified, and the 5,000-plus voters who registered as Libertarian have been designated as “unenrolled” or independent.

Proposed Litigation

LPME proposes to file a new that would challenge the constitutionality of the following provisions of the Maine Election Code:

§301: requiring that a newly qualified party must have enrolled at least 10,000 voters by the second general election after it qualifies, and thereafter;

§304: disqualifying any party that fails to comply with §301;

§306: designating voters enrolled in a party disqualified under §304 as unenrolled;

§335: establishing primary election nomination petition requirements of 2,000 signatures for Governor and Senator and 1,000 signatures for US Congress; further requiring that signatures be from qualified voters who are registered members of the party.

The lawsuit would allege that the foregoing provisions violate the First and Fourteenth Amendment rights of LPME and its members. The plaintiffs can assert at least three potentially viable claims.

The first claim would allege that the 10,000-voter registration requirement imposed by Section 301 is unduly burdensome and cannot be justified by any legitimate state interest; since the state has determined that 5,000 members is sufficient for a new party to qualify for the ballot, it has no rational

basis for requiring that same party to double its membership after just two general elections in order to remain qualified. Further, disqualifying a party like LPME is especially irrational since it had more than 5,000 registered members when it was disqualified – *i.e.*, more than enough to immediately qualify again as a new party.

The second claim would challenge the unenrollment provision of Section 306 on the ground that it violates LPME members' voting rights and freedom of speech and association. These voters registered as Libertarian, not independent, and the state has no rational basis for designating them as independents.

The third claim would challenge the primary ballot access signature requirements imposed by Section 335 separately and in conjunction with the 10,000-member requirement imposed by Section 306. As applied to LPME, these requirements plainly exceed the constitutional limits established by Supreme Court precedent, because they require candidates to demonstrate support from as much as 30 percent of the eligible voters (the Supreme Court has struck down requirements in excess of 5 percent of eligible voters). In addition, because the Section 335 signature requirements make it virtually impossible for LPME candidates to appear on the ballot, they make the 10,000-member requirement imposed by Section 306 unduly burdensome. The state cannot reasonably require a new party to double its membership in just two election cycles when it makes it impossible for the party's candidates to appear on the ballot.

Venue, Counsel and Costs

This case would be filed in the Federal District Court for the District of Maine. I believe I have found competent counsel who would be willing to represent LPME *pro bono*. I would serve as co-counsel. We would both seek admission to the court *pro hac vice*. The fee for such admission is \$100 each. Additionally, the filing fee is \$400, and there would be incidental costs for postage and related expenses. The greatest expense would be for travel. We should anticipate at least two trips to Maine during the lower court proceedings, for pre-trial conferences and hearings. Taken together, therefore, expenses for the case could amount to \$5,000 or more (although hopefully less). Also, in the event that the state prevailed, the plaintiffs could be liable for the state's costs (not attorney's fees). If the state mounted an aggressive defense, including taking depositions, this could amount to \$5,000 or more.

Conclusion

I look forward to answering any questions and discussing the merits of this case with the Executive Committee.