

## **MEMORANDUM**

**TO:** Libertarian National Committee

**FROM:** Oliver Hall

**DATE:** July 26, 2019

**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 March 8, 2019. 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: the terms of an independent contractor's contract; the procedures relating to a state party's expulsion of a member; proper construction of contract terms for independent contractors; proper procedures for accepting a bequest; motion to censure member;

I also provided the following services:

- Advised Pennsylvania candidate regarding complaint against validity of nomination petitions;
- Advised petition circulators regarding protection of their right to petition in public fora;
- Advised LNC regarding potential petition for certiorari in *LNC v. FEC*;
- Advised Executive Director regarding establishment of referral program;
- Coordinated payment of litigation costs in Kentucky litigation;
- Coordinated receipt of bequest funds;
- Coordinated with member seeking to name LNC as beneficiary of trust;
- Coordinated disbursement of bequest to LPNM;
- Drafted revised language for NDA agreement;
- Reviewed fundraising communications;
- Reviewed and drafted revised language for LNC Chair's declaration in support of Georgia litigation; and
- Drafted legal representation letter for LNC's audit.

Finally, I drafted or reviewed and approved multiple contracts, including those executed with the following: Executive Director; Development Director; Editor and Technology Developer; AV vendor for convention; convention hotel; office equipment vendor; and member referrers.

### **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 appealed to the 9<sup>th</sup> Circuit. Briefing on the appeal was completed in April 2018 and oral argument was held on March 12 in San Francisco. The 9<sup>th</sup> Circuit affirmed on May 31, 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@bryansellsllaw.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 filed cross-motions for summary judgment. On April 21, 2019, the District Court denied the plaintiffs' motion for summary judgment and granted the FEC's motion. The plaintiffs have appealed. 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. Briefing of the appeal was completed in October 2018. The D.C. Circuit ruled for the FEC on the merits in May 2019. Plaintiffs are considering filing a petition for certiorari. 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 appealed to the 6th Circuit, which affirmed in November 2018. Plaintiffs are responsible for paying the defendant's litigation costs. 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 202-280-0898 or oliverbhall@gmail.com.