

MEMORANDUM

TO: Libertarian National Committee

FROM: Oliver Hall

DATE: November 14, 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 July 26, 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: construction of Policy Manual as applied to independent contractor contracts; publication of online content; compensation to deceased employee; state party affiliate's acceptance of bequest; and proposed litigation against FEC.

I also provided the following services:

- Coordinated disbursement of escrow funds for state party affiliate;
- Reviewed FEC decision on debate sponsor complaint and provided counsel;
- Provided counsel to state party affiliate preparing response to FEC complaint.

Finally, I drafted or reviewed and approved multiple contracts, including those executed with the following: 2020 National Convention hotel and addendum; 2022 National Convention hotel; External Relations Associate; Development Director; Development Associate; and fundraising contractor.

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 9th Circuit. Briefing on the appeal was completed in April 2018 and oral argument was held on March 12 in San Francisco. The 9th Circuit affirmed on May 31, 2019. Plaintiffs' petition for certiorari is due December 8, 2019. (I represent the Plaintiffs outside the scope of my representation of the LNC.)

Cowen v. Raffensperger, No. 1:17-cv-04660 (N.D. Ga. Nov. 21, 2017), No. 19-14065 (11th Cir. 2019): 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 District Court granted summary judgment to Defendants and Plaintiffs appealed. Plaintiff-Appellants filed their opening brief in the 11th Circuit on November 13, 2019. 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. Plaintiff-Appellants filed their opening brief in the D.C. Circuit on September 26, 2019. 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 filed a petition for certiorari with the Supreme Court on August 19, 2019. The case has been distributed for the Court's November 22, 2019 conference. Plaintiffs' counsel is Alan Gura, Gura & Possessky: alan@gurapossessky.com; 703.835.9085.

Libertarian Party of Maine v. Dunlap, No. 1:19-cv-00509 (D. Me. 2019): This case challenges several provisions of Maine law governing the establishment of new political parties. LPME initially complied with these provisions by enrolling 5,000 members prior to the 2016

general election. It was therefore ballot-qualified for the 2016 and 2018 general elections. To remain ballot-qualified, however, it was required to double its enrollment to 10,000 members, and to ensure they all voted in the 2018 general election. At the same time, it was required to nominate by primary election, but Maine's primary election ballot access requirements are impossible or near-impossible for LPME candidates to meet. Consequently, LPME could not run any candidates in the 2018 general election, and it failed to ensure that 10,000 LPME members voted in that election. The party was thus disqualified and its 6,168 members unenrolled. LPME is seeking a declaration that these provisions are unconstitutional and injunctive relief as needed to become ballot-qualified again. Plaintiffs' complaint was filed November 1, 2019. (I represent the Plaintiffs outside the scope of my representation of the LNC.)

Libertarian Party of Minnesota v. Choi, No. 1:19-cv-02312 (D. Minn. 2019): This case challenges a statute requiring that signers of a minor party candidate's nomination petition swear that they will not vote in the primary election. Violation of the statute is a felony, perjury, punishable by five years in jail and \$10,000 in fines. Signers of major party nomination petitions do not swear to the same or any similar oath. Plaintiffs filed their complaint on August 21, 2019. Plaintiffs' counsel is Erick G. Kaardal, Mohrman, Kaardal & Erickson, P.A.; 150 South Fifth Street, Suite 3100, Minneapolis, MN 55402; (612) 341-1074; kaardal@mklaw.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.