

## MEMORANDUM

**TO:** Libertarian National Committee

**FROM:** Oliver Hall

**DATE:** January 29, 2020

**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 November 14, 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.

I also provided the following services:

- Consulted with Development Director regarding fundraising efforts;
- Provided counsel and support relating to potential amicus brief in *United States v. Salgado* (civil asset forfeiture case);
- Provided counsel relating to draft Amended Complaint in *Misbach v. Merrill* and coordinated with Plaintiffs regarding LNC's participation in case as a plaintiff;
- Provided counsel to state party affiliate regarding complaint filed with Federal Election Commission and subsequent administrative proceedings;
- Provided counsel to state party affiliate regarding potential litigation to challenge New York ballot access laws;
- Reviewed filings in *Level the Playing Field v. Federal Election Commission* for consistency with LNC interests;
- Coordinated 2020 bequest disbursements;

- Drafted cease and desist letters for individuals attempting to appropriate “Libertarian National Committee,” “Libertarian Party” and intellectual property contained on [www.lp.org](http://www.lp.org).

Finally, I drafted or reviewed and approved multiple contracts, including those executed with the following: 2020 Convention Hotel “Overflow”; Austin 2020 Convention Hotel Addendum; Hyatt House 2020 Convention; Omni 2020 Convention; Holiday Inn Express 2020 “Overflow”; LNC Headquarters HVAC Unit; Reno Nugget 2022 Convention; Indianapolis Marriott 2022 Convention; D.C. Hilton 2024 Convention; Fundraiser Contractor; Director of Development; and Blackbaud.

### **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. Plaintiffs filed their petition for certiorari, and it is being circulated for the Supreme Court’s conference on February 21, 2020. (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 and filed their reply brief on December 26, 2019. Briefing on the appeal is now complete. On January 27, 2020, the Court of Appeals indicated that it would hold oral argument. Plaintiffs’ counsel is Brian Sells: (404) 480-4212; [bryan@bryansellsllaw.com](mailto: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 and filed their reply brief on November 25, 2019. Briefing on the appeal is now closed. Plaintiffs' counsel is Alexandra Shapiro, Shapiro Arato LLP: [ashapiro@shapiroarato.com](mailto: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 Court denied the petition for certiorari on November 25, 2019. Plaintiffs' counsel is Alan Gura, Gura & Possessky: [alan@gurapossessky.com](mailto:alan@gurapossessky.com); 703.835.9085.

***Misbach v. Merrill, NO. X03 HHD-CV19-6118097-S (Super. Ct. Hartford, CT 2019)***

This case was filed on behalf of the Libertarian Party of Connecticut, the Libertarian National Committee and individual plaintiffs affiliated with LPCT. It challenges a number of Connecticut's ballot access requirements for minor parties, including the requirement that each minor party candidate must submit an individual nomination petition to appear on the general election ballot (thus prohibiting the party from achieving ballot access for all offices statewide). Plaintiffs filed their amended complaint on December 5, 2019. They are filing a motion for preliminary injunction on or before February 10, 2020, and the Court has scheduled a hearing for March 9, 2020. Plaintiffs' counsel is Edward Bona, P.O. Box 13, Plainfield, CT 06374; 860-889-5930; [edward-bona@comcast.net](mailto:edward-bona@comcast.net). Plaintiff Dan Reale is also coordinating the litigation: Dan Real, 20 Dougherty Avenue, Plainfield, CT 06374; 860-377-8047; [headlinecopy@gmail.com](mailto:headlinecopy@gmail.com).

***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. The parties are currently

taking discovery. Plaintiffs will file their motion for preliminary injunction in February 2020. (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. The Court has scheduled a hearing for May 19, 2020. 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](mailto:kaardal@mklaw.com).

***Miller v. Doe, No. 1:19-cv-00700 (W.D. Tex.)***

This case was filed on behalf of several voters, candidates and minor political parties, including the Libertarian Party of Texas, to challenge the burdensome provisions of Texas law that make it practically impossible for non-wealthy independent and new or minor party candidates to obtain ballot access, including high nomination petition signature requirements, short petition circulation periods, early filing deadlines and restrictions on voters' eligibility to sign nomination petitions. It also challenges the new filing fee or nomination petition requirements that Texas enacted in 2019, which now apply to candidates seeking the nomination of a minor political party. Plaintiffs filed their complaint on July 11, 2019 and thereafter filed a motion for preliminary injunction seeking to enjoin enforcement of the new requirements that Texas enacted in 2019. Defendants also filed a motion to dismiss. The District Court held a hearing on both motions on October 31, 2019. On November 25, 2019, the District Court entered an order denying both motions. The parties are now taking discovery, with motions for summary judgment to be filed by August 24, 2020. (I represent the Plaintiffs outside the scope of my representation of the LNC. A team of attorneys from Shearman & Sterling, LLP serves as co-counsel.)

**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](mailto:oliverbhall@gmail.com).