



Caryn Ann Harlos <carynannharlos@gmail.com>

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## [Lnc-business] Proposed Amicus Brief: Carney v. Adams

5 messages

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**Oliver Hall via Lnc-business** <lnc-business@hq.lp.org>

Wed, Feb 5, 2020 at 9:34 AM

Reply-To: lnc-business@hq.lp.org

To: Libertarian National Committee list <lnc-business@hq.lp.org>

Cc: Oliver Hall <oliverbhall@gmail.com>

Greetings:

I am writing to provide further information about /Carney v. Adams/, No. 19-309, to assist the LNC in determining whether to file an amicus brief in support of the Plaintiff-Respondent in this case.

\*The deadline for filing such a brief is March 2, 2020. \*

The case arises from a decision of the Third Circuit, which held unconstitutional certain provisions of the Delaware Constitution that disqualify independents and minor party members from serving as judges of the Delaware Supreme Court, the Delaware Court of Chancery or the Delaware Superior Court. As applied, these provisions guarantee that such judges shall be members of "one major political party" or "the other major political party."

The Plaintiff-Respondent, James Adams, is an independent who wishes to serve as a judge in the Delaware courts but is prohibited by the challenged state constitutional provisions. The Defendant-Petitioner is John Carney, Governor of Delaware.

Both the District Court and the Third Circuit ruled in the Plaintiff-Respondent's favor, holding the provisions unconstitutional. The Third Circuit held that the provisions are unconstitutional on two grounds:

1. Use of political affiliation as a qualification for a judgeship violates the First Amendment; and
2. Disqualification of non-major party members from serving as judges violates the First Amendment.

After losing in the Third Circuit, the Defendant-Petitioner filed a petition for certiorari. The Supreme Court granted the petition on December 6, 2019. The Supreme Court will hear oral argument on March 25, 2020.

The proposed amicus brief would be in support of the Plaintiff-Respondent, on the merits of the case (not in opposition to the petition for certiorari, which was already granted).

\*\_Reasons the LNC May Wish to File an Amicus Brief\_\*

1. The LNC has an interest in challenging state laws that categorically exclude Libertarians from serving in public office;
2. If the Supreme Court upholds the law, it may set a precedent that negatively affects the Libertarian Party in ballot access and other cases;

3. The Supreme Court's acceptance of the petition for certiorari appears to be an indication (or at least raises the risk) that it will reverse the Third Circuit's decision;
4. Many amicus briefs have been filed in this case already, including from well-known "good government" groups, most of which argue that the challenged provisions should be upheld as promoting "diversity" in the judiciary;
5. A brief filed by the LNC could be valuable in arguing that exclusion of its members from holding judgeships in Delaware plainly violates their First Amendment rights, and in any event, such a categorical exclusion is not narrowly tailored to promote the state's purported interest in promoting "diversity" among the judiciary;
6. The LNC (and other minor parties) is uniquely positioned to file such a brief.

Again, the proposed amicus brief is \*due March 2, 2020.\*

Please let me know if I can answer questions or provide further information.

Thank you,

Oliver

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Oliver B. Hall  
Special Counsel  
Libertarian National Committee  
202-280-0898

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**Tim Hagan via Lnc-business** <lnc-business@hq.lp.org>

Wed, Feb 5, 2020 at 12:06 PM

Reply-To: lnc-business@hq.lp.org

To: lnc-business@hq.lp.org

Cc: Tim Hagan <tim.hagan@lp.org>, Oliver Hall <oliverbhall@gmail.com>

Thanks for the info, Oliver. How much will filing an amicus brief cost?

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Tim Hagan  
Treasurer, Libertarian National Committee

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**Oliver Hall via Lnc-business** <lnc-business@hq.lp.org>

Wed, Feb 5, 2020 at 12:33 PM

Reply-To: lnc-business@hq.lp.org

To: Tim Hagan <tim.hagan@lp.org>, lnc-business@hq.lp.org

Cc: Oliver Hall <oliverbhall@gmail.com>

Thanks for the query Tim and my apologies for not including an estimate.

The cost depends entirely on the length of the brief.

The cert petition we just filed on behalf of AZLP was about \$3,000, including the filing fee, but that was 119 total pages (mainly due to the inclusion of the required appendix). An amicus brief in this case would be much shorter. Therefore, I estimate the cost of the brief would be \$1,500 or less.

That cost does not include any fee paid to an attorney to author the brief. Any such fee would be negotiable, of course, and we might find an attorney willing to do the brief /pro bono/, but I don't have anyone lined up.

One further consideration: this is a case where it might be worth reaching out to other parties -- e.g., the Green Party, Constitution Party, etc. -- who may be willing to join the brief and split the costs.

-Oliver

Oliver B. Hall  
Special Counsel  
Libertarian National Committee  
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**Caryn Ann Harlos** <caryn.ann.harlos@lp.org>  
To: Libertarian National Committee list <Inc-business@hq.lp.org>  
Cc: Tim Hagan <tim.hagan@lp.org>, Oliver Hall <oliverbhall@gmail.com>

Thu, Feb 6, 2020 at 10:08 AM

Does this require an EC meeting?

In Liberty,

*Caryn Ann Harlos*

**Personal Note:** I have what is commonly known as Asperger's Syndrome (part of the autism spectrum). This can affect inter-personal communication skills in both personal and electronic arenas. If anyone found anything offensive or overly off-putting (or some other social faux pas), please contact me privately and let me know.

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**Joe Bishop-Henchman via Lnc-business** <Inc-business@hq.lp.org>  
Reply-To: Inc-business@hq.lp.org  
To: Inc-business@hq.lp.org  
Cc: Joe Bishop-Henchman <joe.bishop-henchman@lp.org>, Oliver Hall <oliverbhall@gmail.com>

Thu, Feb 6, 2020 at 10:16 AM

Given that there will likely be a ton of briefs urging reversal, including by the Democratic and Republican parties, I support filing an LNC brief supporting affirmance. Delaware's constitutional provision limiting judgeships to members of "one major political party" and "the other major political party" should be invalidated, and so far the lower courts have agreed with us. Inches from victory

JBH

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Joe Bishop-Henchman

LNC Member (At-Large)

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[www.facebook.com/groups/189510455174837](https://www.facebook.com/groups/189510455174837)

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