

MEMORANDUM

TO: Libertarian National Committee

FROM: Oliver Hall

DATE: December 5, 2020

SUBJECT: Special Counsel's Report

Introduction

This report summarizes my work as Special Counsel to the Libertarian National Committee in the last quarter of 2020. 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, including the following:

- Reviewed litigation proposal and provided counsel regarding potential challenge to governor's executive order authorizing mail-in voting;
- Reviewed correspondence and provided counsel regarding Iowa U.S. Senate candidate's effort to gain inclusion in candidate debate;
- Provided demand letters for North Carolina candidate seeking inclusion in U.S. House candidate debate;
- Provided counsel and litigation support to Illinois U.S. House candidate defending objection to nomination petitions;
- Reviewed correspondence, provided counsel and sent demand letter on behalf of New Hampshire U.S. House candidate's effort to gain inclusion in candidate debate;
- Reviewed correspondence and provided counsel regarding Kentucky U.S. Senate candidate's effort to gain inclusion in candidate debate;
- Reviewed and provided comments on petition for certiorari in *Level the Playing Field v. Federal Election Commission*;

- Secured counsel and coordinated filing of amicus brief in support of petition for certiorari in *Level the Playing Field v. Federal Election Commission*;
- Coordinated disbursement of funds from estate bequest to New Mexico state affiliate;
- Provided counsel and litigation support to New York state affiliate in ballot access litigation;
- Coordinated LNC's response to Maine state affiliate's outreach efforts to formerly enrolled members;
- Reviewed Connecticut state affiliate's ballot access litigation and provided counsel regarding LNC's participation;
- Reviewed and provided counsel regarding contract with eCanvasser.

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 filed their petition for certiorari, and the Supreme Court issued a call for response on January 30, 2020. The petition was denied on June 15, 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. The 11th Circuit reversed and remanded the case to the district court. Briefing on renewed motions for summary judgment is now complete. Plaintiffs' counsel is Brian Sells: (404) 480-4212; bryan@briansellslaw.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. Plaintiffs filed a petition for review with the District Court and 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 appealed and the D.C. Circuit affirmed. Plaintiffs filed a petition for certiorari, which is now pending. Plaintiffs' counsel is Alexandra Shapiro, Shapiro Arato LLP: ashapiro@shapiroarato.com; 212-257-4881.

***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 filed a motion for preliminary injunction in February 2020, but hearing on the motion was canceled due to the COVID-19 pandemic and the case was continued. The Court has requested a status report from the plaintiffs as to whether they wish to continue pursuing their claims. They do. Plaintiffs' counsel is Edward Bona, P.O. Box 13, Plainfield, CT 06374; 860-889-5930; 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.

***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 filed a motion for preliminary injunction in March 2020. The Court concluded that the plaintiffs are likely to prevail on at least some of their claims but still declined to grant preliminary relief. Motions for summary judgment are due on December 30, 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. The case also challenges the statute imposing a two-week limit on the petitioning period. Plaintiffs filed their complaint on August 21, 2019. The Court upheld both statutes and the plaintiffs appealed on June 22, 2020. Briefing on the appeal was completed on October 14, 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.

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 case was continued due to the COVID-19 pandemic. The parties are now taking discovery, with motions for summary judgment to be filed by May 31, 2021. (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.