

## MEMORANDUM

**TO:** Libertarian National Committee

**FROM:** Oliver Hall

**DATE:** September 2, 2021

**SUBJECT:** Special Counsel's Report

### Introduction

This report summarizes my work as Special Counsel to the Libertarian National Committee since my last report dated March 4, 2021. 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 on a variety of matters as needed or requested, including the following:

- Infringement of LP intellectual property rights by unauthorized entity;
- Public records requests targeting elected Libertarian officials in Florida;
- Development Director's communications strategy;
- Legal issues relating to procedures for removal of LNC officer;
- Confidentiality of communications to be disclosed to LNC Investigatory Committee;
- Filing on behalf of LNC officer's attorney with respect to motion pending before LNC.

In addition, I provided the following legal services:

- Drafted demand letter to police department regarding interference with LP petition circulators' petitioning in Auburn, Alabama;
- Retained counsel, reviewed and approved pleadings in New Mexico ballot access litigation;
- Drafted cease and desist letter to entity using LP intellectual property without authorization;
- Coordinated probate of will naming LNC as beneficiary;
- Drafted memorandum regarding legal issues associated with proposed resolution in response to allegation of sexual harassment;
- Reviewed lawsuit against IRS, among others, and request for LNC assistance; provided recommended response;
- Consulted with Pennsylvania state affiliate regarding ballot access issues and provided guidance regarding compliance and legal strategy for potential litigation;
- Consulted with Investigatory Committee regarding LNC's response to requests for

production.

Finally, I drafted or reviewed, provided counsel and approved the following contracts: Director-Level LNC staff; Arkansas petition circulators; Joint Contribution Agreement; Non-Disclosure Agreement; 50th Anniversary Event Hotel; 50th Anniversary Caterer; LNC Executive Director; LNC Development Director; and Balboa Bay Resort.

### **Litigation**

#### ***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. Following remand, on March 29, 2021, the District Court ruled in Plaintiffs' favor. Thereafter, as a remedy, the Court proposed that the signature requirement be lowered to 1 percent of registered voters, and also that candidates pay a fee of \$5,200. On September 2, 2021, both the Plaintiffs and Defendants filed objections to the proposed remedy. Plaintiffs' counsel is Brian Sells: (404) 480-4212; [bryan@bryansells.com](mailto:bryan@bryansells.com).

#### ***Iowa Libertarian Party v. Pate, No. 4:19-cv-00241 (S.D. Iowa)***

This case challenges a law enacted in 2019 that moved Iowa's filing deadline for independent and unqualified parties' presidential nominees from August to March. Plaintiffs filed their motion for summary judgment on March 3, 2021. Plaintiffs' counsel is Robert M. Bastress, Jr.: (304) 319-0860; [rmbastress@gmail.com](mailto:rmbastress@gmail.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. The FEC filed a response to the petition and Plaintiffs filed their reply in February 2021. The Court denied the petition on March 22, 2021. Plaintiffs' counsel is Alexandra Shapiro, Shapiro Arato LLP: [ashapiro@shapiroarato.com](mailto:ashapiro@shapiroarato.com); 212-257-4881.

#### ***Libertarian Party of New York v. N.Y. State Bd. of Elections, No 1:20-cv-05820 (S.D. N.Y.)***

This case was filed in July 2020 to challenge a new law that substantially increased the thresholds

for minor parties to qualify for the ballot and to retain ballot access. Since 1936, a ballot-qualified party retained ballot access by polling 50,000 votes for governor every four years, and a new party could become ballot-qualified by submitting a nomination petition with 15,000 signatures. Under the new law, a ballot-qualified party must poll 130,000 votes for governor and president every two years to retain ballot access, and a new party must submit a petition with 45,000 signatures to qualify for the ballot. Plaintiffs filed a motion for preliminary injunction, which the Court denied. Both parties have filed motions for summary judgment and briefing on the motions is now complete. Plaintiffs' counsel is Michael Kuzma: (716) 822-7645; [kuzma\\_michael@hotmail.com](mailto:kuzma_michael@hotmail.com).

***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. Thereafter, the Court requested set a briefing schedule for dispositive motions, which both parties filed. Briefing was completed on the motions in April 2021. 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. 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. The parties have filed cross-motions for summary judgment and briefing on the motions was completed in March 2021. (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. The Eighth Circuit heard oral argument on the appeal on June 16, 2021. 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 case was continued due to the COVID-19 pandemic. The parties filed motions for summary judgment On August 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](mailto:oliverbhall@gmail.com).