

## MEMORANDUM

TO: The Libertarian National Committee  
FROM: Bill Hall, General Counsel  
DATE: November 18, 2008  
RE: Report on Legal Matters

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### INTRODUCTION

This report sets forth my and our activities on the legal front since my last report on pending legal matters. This report is not privileged and confidential, as it simply relates facts and does not constitute legal advice. It is not intended to waive any attorney client privilege. You may share it with other members of the Libertarian Party®, if you wish.

### GENERAL

Requests for my firm to handle legal matters come in to me on a regular basis from the national office and various LNC officers. For example, since my last report I, or members of my firm, have been consulted on a number of matters:

1. Review, revision, negotiation and completion of the 2010 national convention contract;
2. Discussions regarding seeking an FEC advisory opinion with respect to the staging of LP national conventions. Note that while the LNC authorized me to seek such an opinion at its September 2008 meeting, at the request of Bill Redpath and Michael Colley I have held off doing so for the time being, pending further direction;
3. The Burrington bequest to the LP, including further negotiation of the escrow agreement, interaction with the Estate's attorneys and escrow agent, and planning for potential FEC litigation over the donation;
4. Monitoring correspondence/news in connection with ballot access lawsuits in Massachusetts, Connecticut, Louisiana, Maine and New Hampshire. Note that almost all of this correspondence/news was distributed on LNC-Discuss or publicly, as I rarely was directly provided any information or consulted directly by LNC staff or the LNC's attorneys litigating these matters;
5. Providing advice in connection with LNC liability for candidate debt;
6. Reviewing and commenting on the proposed auditing contract;
7. Reviewing correspondence regarding and providing advice with respect to board governance issues;

8. Reviewing and providing advice with respect to allegations made by Gary Fincher's attorney regarding his petitioning efforts in Massachusetts;

9. Providing advice in connection with the LNC's possible participation in the presidential ballot challenge in Texas;

10. Providing advice in connection with campaign finance law compliance issues, including some advice to state affiliates and candidates; and

11. Monitoring correspondence and pleadings in connection with the "Top Two" primary litigation in Washington state and the Pennsylvania presidential substitution case.

## **PENDING LITIGATION**

The LNC often assists LP state affiliates and candidates in various ballot access and other lawsuits and/or appeals by sharing expertise and/or financial resources. I play a role in some, but not all of those interactions. Currently, I am not aware of any litigation in which the LNC or national LP are named parties, except as provided below:

### **Massachusetts Substitution Lawsuit**

*Ballot Access News* advises that our victory requiring Massachusetts to substitute Barr/Root for Phillies/Bennett on the Massachusetts ballot was appealed to the First Circuit Federal Court of Appeals by the Massachusetts Secretary of State.

### **New Hampshire Substitution Lawsuit**

As you know, the court refused to substitute Barr/Root for Phillies/Kwiatowski on the ballot, resulting in two LP candidates for president listed on the ballot. Sean Haugh advises that the LNC's attorney, Gary Sinawski, will be pursuing a motion for summary judgment to be filed by January, asking for a ruling that Barr should have been substituted, and awarding damages. While the LPNH joined this suit, George Phillies refused to cooperate in this lawsuit.

### **Connecticut Ballot Access Lawsuit**

As you know, we lost our motion for an injunction to put Barr/Root on the ballot, even though it appears sufficient petition signatures were timely filed. Sean Haugh advises that the LNC's attorney, Gary Sinawski, will be pursuing a motion for summary judgment to be filed by January, asking for a ruling Barr/Root should have been placed on the ballot, and awarding damages.

### **Maine Ballot Access Lawsuit**

As you know, we lost our motion for an injunction to put Barr/Root on the ballot, even though it appears sufficient petition signatures were filed in sufficient time to do so (though

arguably not by the preliminary deadline for filing with town clerks). Sean Haugh advises that the LNC's attorney, Gary Sinawski, will be pursuing a motion for summary judgment to be filed by January, asking for a ruling Barr/Root should have been placed on the ballot, and awarding damages.

### **Oklahoma Ballot Access Lawsuit**

*Ballot Access News* advises that the court refused to issue an injunction placing Barr/Root on the Oklahoma ballot, on the theory that the number of signatures required was unconstitutionally excessive. Sean Haugh advises that neither the LNC nor the national Libertarian Party are plaintiffs in this lawsuit. I do not know whether this case has been appealed.

### **NOTE REGARDING PROVISION OF LEGAL SERVICES**

Eight years ago, I made an arrangement with you for the provision of legal services by my firm for calendar year 2001. Under the terms of that arrangement, I agreed to continue to provide substantially the same level of legal services as general counsel as I had in the past (since 1987) on a purely pro bono basis. In return, you agreed to pay my firm \$20,000, plus out-of-pocket expenses. We extended the arrangement for 2002 on the same terms. We extended the arrangement for 2003, but increased the retainer to \$25,000, as a "catch up" to reflect the fact that in 2002 the value of my pro bono time and other compensated work done by my firm totaled in excess of \$80,000 of legal services. During 2004, we continued that arrangement. In 2005, we increased the retainer to \$30,000 to reflect that in 2004 pro bono time and other compensated work done by my firm totaled approximately \$85,000. We continued that arrangement in 2006 and 2007. In 2008, we increased the retainer to \$31,500, payable in monthly installments of \$2,625.

For 2009, I propose to increase my retainer to \$39,000, payable in monthly installments of \$3,250. I recognize that this represents a significant percentage increase in legal costs to the LNC. However, over the past year I, like many of you, have endured the rampant political nastiness on the LNC and in the LP, which makes my role as general counsel much less enjoyable than in the past. For the first time in 20 years of service to the LNC, I have frequently had my legal advice second-guessed by LNC and LP members. Many LNC and LP members have expressed their expectation that I personally oversee every LNC legal matter, when in fact I am often not consulted, or even advised, of many LNC legal matters. All of this has underscored for me the fact that I am exposing myself and my firm to significant liability by acting as general counsel to the LNC, and thus I should cut the volume of legal work I am providing to the LNC on a purely pro bono basis.

As in the past, my proposed retainer represents only a small fraction of the value of the pro bono time and other compensated work done by my firm. Over the years the hourly billing rate my firm has charged for my time has risen much more rapidly than the retainer paid. Currently, it is \$400 per hour, and I expect it to rise for the coming 2009 calendar year.

I make this proposal now so that you can consider it, and any alternatives, in making your budget for next year. If you manage to locate competent replacement counsel to serve the LNC for a better price in the coming calendar year, it would be a relief for me to step aside. Just let me know as soon as possible.

I remind you that this arrangement does not anticipate that my firm will undertake any and all legal work you choose to direct to us for the quoted retainer. Like any small business, there are many legal issues that impact on you, but you do not have the resources to address all of them. Rather, the arrangement includes a subjective judgment of "fairness" concerning the volume of work to be performed.

## **CONCLUSION**

If you have any questions concerning this report, please feel free to contact me. As I have advised several of you, I do not plan to attend the upcoming LNC meeting in San Diego. However, I can make myself available for one or more conference calls during the course of that meeting, and I urge you to take advantage of my availability to do so.

WWH/jg

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