

## **A Minor Candidate's Suits to Be on Presidential Election Ballots**

*De la Fuente Guerra v. Democratic Party of Florida* (Robert L. Hinkle, N.D. Fla. 4:16-cv-26), *De la Fuente v. Kemp* (Richard W. Story, 1:16-cv-256) and *De la Fuente v. Kemp* (Mark H. Cohen, 1:16-cv-2937) (N.D. Ga.), *De la Fuente v. South Carolina Democratic Party* (Cameron McGowan Currie, D.S.C. 3:16-cv-322), *De la Fuente Guerra v. Winter* (Robert C. Brack, D.N.M. 1:16-cv-393), *De la Fuente v. Krebs* (Roberto A. Lange, D.S.D. 3:16-cv-3035), *De la Fuente v. Cortés* (John E. Jones III, M.D. Pa. 1:16-cv-1696), *De la Fuente v. Wyman* (Benjamin H. Settle, W.D. Wash. 3:16-cv-5801), and *De la Fuente v. Alcorn* (Liam O'Grady, E.D. Va. 1:16-cv-1201)

A minor candidate for President of the United States initiated federal litigation in several states, often pro se, to get on both primary election and general election ballots in 2016.

### *Florida*

A prospective candidate for the Democratic nomination for President and seven voters filed a federal complaint in the Northern District of Florida on January 15, 2016, challenging the state's Democratic Party's exclusion of the candidate from the March 15 primary election for President.<sup>1</sup> Three days later, the plaintiffs filed motions for preliminary injunctive relief<sup>2</sup> and expedited consideration.<sup>3</sup>

On January 23, Judge Robert L. Hinkle denied the plaintiffs a preliminary injunction without prejudice: "The plaintiffs have tendered no evidence that Mr. De La Fuente has any support at all beyond the seven voters who are plaintiffs in this action."<sup>4</sup> On April 18, following the primary election in which the prospective candidate did not appear on the ballot, Judge Hinkle dismissed the case as moot.<sup>5</sup> A March 29 complaint challenged as unconstitutionally burdensome Florida's requirement that independent candidates in the general election submit signatures from one percent of eligible voters.<sup>6</sup>

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1. Complaint, *De la Fuente Guerra v. Democratic Party of Fla.*, No. 4:16-cv-26 (N.D. Fla. Jan. 15, 2016), D.E. 1.

2. Motion, *id.* (N.D. Fla. Jan. 18, 2016), D.E. 3.

3. Motion, *id.* (N.D. Fla. Jan. 18, 2016), D.E. 4.

4. Opinion, *id.* (N.D. Fla. Jan. 23, 2016), D.E. 7; *see* Order, *id.* (Feb. 6, 2016), D.E. 15 (denying reconsideration).

5. Order, *id.* (Apr. 18, 2016), D.E. 23 (allowing an amended complaint).

6. Complaint, *De la Fuente Guerra v. Florida*, No. 4:16-cv-196 (N.D. Fla. Mar. 29, 2016), D.E. 1.

Judge Hinkle issued an order to show cause why the second case should not be dismissed for lack of prosecution on June 26.<sup>7</sup> The case concluded on August 1 by voluntary dismissal.<sup>8</sup> The candidate qualified for the general election ballot in Florida as a nominee of the Reform Party.<sup>9</sup>

### *Georgia*

On January 28, the prospective candidate and three Georgia voters filed a federal complaint in the Northern District of Georgia against Georgia's secretary of state and the state Democratic Party challenging the national party's exclusion of the prospective candidate from its list of candidates for the state primary election.<sup>10</sup> On the following day, the plaintiffs filed a motion for a preliminary injunction and a permanent injunction.<sup>11</sup>

Judge Richard W. Story heard the case on February 4 and denied the plaintiffs injunctive relief because of laches.<sup>12</sup> The plaintiffs waited over 60 days from when they knew that the prospective candidate would be excluded from the ballot to file the complaint, and overseas ballots had already begun to be distributed.<sup>13</sup>

As it happened, the plaintiffs' candidate was included on the Georgia ballot after all.<sup>14</sup> An appeal was voluntarily dismissed.<sup>15</sup>

On August 12, the candidate filed a second federal complaint challenging the validity of Georgia's July 1 deadline for a presidential candidate in the general election to file a slate of Electoral College electors, because the candidate thought the July 12 deadline for filing ballot petition signatures also applied to filing the slate of electors.<sup>16</sup> Among other things, the complaint asked for emergency mandamus relief.<sup>17</sup>

Reviewing the complaint on the day that it was filed, Judge Mark H. Cohen ordered the candidate to serve Georgia's attorney general with the complaint alleging a statute to be unconstitutional.<sup>18</sup> Four days later, Judge Co-

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7. Order, *id.* (June 26, 2016), D.E. 11.

8. Judgment, *id.* (Aug. 1, 2016), D.E. 18; see Notice of Voluntary Dismissal, *id.* (July 28, 2016), D.E. 16.

9. See George Bennett, *Four Minor Parties on Florida Presidential Ballot*, Palm Beach Post, Oct. 22, 2016, at 10A; Anthony Man, *Third Parties Wield Influence*, Ft. Lauderdale Sun-Sentinel, Oct. 23, 2016, at A1.

10. Complaint, *De la Fuente v. Kemp*, No. 1:16-cv-256 (N.D. Ga. Jan. 28, 2016), D.E. 1.

11. Motion, *id.* (Jan. 29, 2016), D.E. 2.

12. Opinion, *id.* (Feb. 4, 2016), D.E. 8; Transcript at 19, *id.* (Feb. 4, 2016, filed Feb. 26, 2016), D.E. 19 ("I'm going to deny the relief certainly on the laches because I just don't think I can disrupt this election when you've waited this long to seek relief."); Minutes, *id.* (Feb. 4, 2016), D.E. 9.

13. *Id.* at 4; see Opinion, *id.* (Mar. 7, 2016), D.E. 21 (denying reconsideration).

14. See Cy Wood, *Super Tuesday Vote Includes Local Races*, West Point Times-News, Feb. 29, 2016, at 1.

15. Order, *De la Fuente v. Secretary*, No. 16-10713 (11th Cir. Apr. 1, 2016); see also Stipulated Dismissal, *De la Fuente*, No. 1:16-cv-256 (N.D. Ga. Apr. 22, 2016), D.E. 26.

16. Complaint, *De la Fuente v. Kemp*, No. 1:16-cv-2937 (N.D. Ga. Aug. 12, 2016), D.E. 1.

17. *Id.* at 8.

18. Order, *id.* (Aug. 12, 2016), D.E. 4.

hen observed by order that the complaint sought emergency relief, but no motion for such relief had been presented to the court.<sup>19</sup> On the next day, the candidate filed such a motion.<sup>20</sup> Judge Cohen gave Georgia's secretary of state six days to respond.<sup>21</sup> Judge Cohen set the case for hearing on August 26.<sup>22</sup>

At the hearing, Judge Cohen noted that there was a question about the adequacy of the candidate's ballot petition signatures, and Judge Cohen asked whether he should defer ruling on constitutional questions until that matter was settled.<sup>23</sup> The candidate's attorney responded, "if we don't prevail on the constitutional argument here, I'm not certain that we would—that my client would actually spend the money to validate the signatures in the first place."<sup>24</sup>

On August 30, Judge Cohen concluded, "Although the Court might agree that the two different deadlines may be illogical or ill-advised, this does not make the imposition of either deadline an undue burden on an independent candidate."<sup>25</sup>

### *South Carolina*

District of South Carolina Judge Cameron McGowan Currie, on February 25, denied the prospective candidate a preliminary injunction to either put him on South Carolina's primary ballot or reschedule the election.<sup>26</sup> Judge Currie found no apparent constitutional infirmity in the state party's conclusion that the candidate was not generally acknowledged in news media as a viable candidate.<sup>27</sup> The candidate filed his pro se complaint<sup>28</sup> on February 2, 25 days in advance of the primary election and 52 days following his exclusion from the ballot; he filed a motion for a preliminary injunction<sup>29</sup> on February 22.<sup>30</sup> Judge Currie found an "inexcusable lack of diligence" in his pursuit of federal court relief.<sup>31</sup>

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19. Order, *id.* (Aug. 16, 2016), D.E. 8.

20. Motion, *id.* (Aug. 17, 2016), D.E. 9.

21. Order, *id.* (Aug. 17, 2016), D.E. 10.

22. Amended Order, *id.* (Aug. 22, 2016), D.E. 15; *see Minutes, id.* (Aug. 26, 2016), D.E. 19.

23. Transcript at 3–4, *id.* (Aug. 26, 2016, filed Sept. 21, 2016), D.E. 28.

24. *Id.* at 4.

25. Opinion, *id.* (Aug. 30, 2016), D.E. 21; *see* N.D. Ga. Transcript *supra* note 23, at 32 (nothing that the general assembly has "a right to be dumb; they just don't have a right to do something that's unconstitutional").

26. *De la Fuente v. S.C. Democratic Party*, 164 F. Supp. 3d 794 (D.S.C. 2016) (claiming that the "Plaintiff has already been accepted on the ballot in over forty states and territories").

27. *Id.* at 800–03.

28. Complaint, *De la Fuente v. S.C. Democratic Party*, No. 3:16-cv-322 (D.S.C. Feb. 22, 2016), D.E. 1; *see* Second Amended Complaint, *id.* (Apr. 20, 2016), D.E. 58; First Amended Complaint, *id.* (Feb. 24, 2016), D.E. 29.

29. Preliminary Injunction Motion, *id.* (Feb. 22, 2016), D.E. 17 [S.C. Preliminary Injunction Motion].

30. *De la Fuente*, 164 F. Supp. 3d at 797, 804–05.

31. *Id.* at 805.

On November 9, however, she denied the state party's 88-word October 3 motion for summary judgment because no brief or evidence was filed in support of the motion.<sup>32</sup>

#### *New Mexico*

District of New Mexico Judge Robert C. Brack denied the pro se prospective candidate immediate relief on June 3.<sup>33</sup> "As of the date of this order, the docket reflects no service on the [state's] Secretary [of State]. . . . The motion is unsigned and lacks verification. The memorandum was filed with a copied signature."<sup>34</sup> As to the merits of the May 6 complaint, "Plaintiff has cited no precedent to support its requested remedy to halt an ongoing election."<sup>35</sup>

Here, according to the complaint, the State notified the Plaintiff that he would not be on the ballot on March 28, 2016, over a month before early voting was scheduled to begin. The Plaintiff brought suit only four days before early voting began. The Plaintiff did not file this motion for a preliminary injunction until three days before the actual date of the primary [June 7].<sup>36</sup>

The candidate qualified for New Mexico's general election ballot as the American Delta Party's nominee.<sup>37</sup>

#### *South Dakota*

The candidate filed a counseled complaint in the District of South Dakota on August 24 challenging the state's ballot petition signature requirements as excessively strict as to form and notarization requirements.<sup>38</sup> On the following day, Judge Roberto A. Lange set the case for hearing five days after that.<sup>39</sup> On August 26, the candidate filed a motion for emergency preliminary injunctive relief.<sup>40</sup> At the end of the hearing, Judge Lange denied the candidate relief for reasons explained at the hearing.<sup>41</sup> A transcript of the hearing has not been filed.<sup>42</sup>

#### *Pennsylvania*

On September 14, Middle District of Pennsylvania Judge John E. Jones III decided to abstain from resolution of an August 15 counseled action by the candidate challenging Pennsylvania's sore loser statute keeping the candidate

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32. Opinion, *De la Fuente*, No. 3:16-cv-322 (D.S.C. Nov. 9, 2016), D.E. 76; see Motion, *id.* (Oct. 3, 2016), D.E. 68.

33. Opinion, *De la Fuente Guerra v. Winter*, No. 1:16-cv-393 (D.N.M. June 3, 2016), D.E. 7.

34. *Id.* at 1–2.

35. *Id.* at 4.

36. *Id.*; see Motion, *id.* (June 3, 2016), D.E. 5; Complaint, *id.* (May 6, 2016), D.E. 1; see also *Candidate Wants on Ballot*, Albuquerque J., May 11, 2016, at C2.

37. See Dianne L. Stallings, *Dates and Information to Note for Fall Election*, Ruidoso News, Oct. 12, 2016, at A6.

38. Complaint, *De la Fuente v. Krebs*, No. 3:16-cv-3035 (D.S.D. Aug. 24, 2016), D.E. 1.

39. Order, *id.* (Aug. 25, 2016), D.E. 8.

40. Motion, *id.* (Aug. 26, 2016), D.E. 10.

41. Order, *id.* (Aug. 31, 2016), D.E. 22; Minutes, *id.* (Aug. 30, 2016), D.E. 19; see Summary Judgment, *id.* (Aug. 31, 2016), D.E. 23.

42. Docket Sheet, *id.* (Aug. 24, 2016).

off of the general election ballot because of his defeat in the primary election.<sup>43</sup> Pursuant to *Railroad Commission v. Pullman Co.*,<sup>44</sup> Judge Jones decided that application of the sore loser statute to the candidate's case should be resolved first by the commonwealth courts.<sup>45</sup> Following an unsuccessful state court action,<sup>46</sup> Judge Jones lifted his stay.<sup>47</sup>

### *Washington*

Seeking relief from Washington's requirement of public notice ten days before ballot petition signatures are collected, the candidate filed a federal complaint in the Western District of Washington on September 19.<sup>48</sup> The candidate filed a motion for a temporary restraining order two days later.<sup>49</sup> Five days after that, Judge Benjamin H. Settle heard the case and denied the motion "for the reasons stated on the record."<sup>50</sup> A transcript of the hearing has not been filed.<sup>51</sup> The case continues, because the candidate intends to run again in 2020.<sup>52</sup>

### *Virginia*

A September 21 pro se complaint filed in the Eastern District of Virginia challenged Virginia's requirement that the candidate's Electoral College nominees disclose their Social Security numbers.<sup>53</sup> With his complaint, the candidate filed a motion for emergency preliminary injunctive relief placing his name on the general election ballot.<sup>54</sup> That day, Judge Liam O'Grady set

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43. *De la Fuente v. Cortés*, \_\_\_ F. Supp. 3d \_\_\_, 2016 WL 4870631 (M.D. Pa. 2016) (opinion filed at M.D. Pa. No. 1:16-cv-1696, D.E. 15); see Amended Complaint, *De la Fuente v. Cortés*, No. 1:16-cv-1696 (M.D. Pa. Aug. 18, 2016), D.E. 4; Complaint, *id.* (Aug. 15, 2016), D.E. 1; see also John Latimer, *Lebanon Dems Prepare for Fall*, Lebanon Daily News, Apr. 28, 2016, at A7 (reporting that the candidate received 14,200 primary election votes in Pennsylvania).

44. *R.R. Comm'n v. Pullman Co.*, 312 U.S. 496 (1941) (holding that if resolution of an uncertain state-law matter might moot a federal constitutional question, "In the absence of any showing that . . . methods for securing a definitive ruling in the state courts cannot be pursued with full protection of the constitutional claim, the district court should exercise its wise discretion by staying its hands.").

45. *De la Fuente*, \_\_\_ F. Supp. 3d \_\_\_, 2016 WL 4870631 (opinion filed at M.D. Pa. No. 1:16-cv-1696, D.E. 15).

46. Opinion, *De la Fuente v. Cortes*, No. 518 M.D. 2016 (Pa. Commw. Ct. Oct. 12, 2016), attached to Joint Status Report, *De la Fuente*, No. 1:16-cv-1696 (M.D. Pa. Nov. 14, 2016), D.E. 16.

47. Order, *De la Fuente*, No. 1:16-cv-1696 (M.D. Pa. Nov. 15, 2016), D.E. 18; see Order, *id.* (Dec. 16, 2016), D.E. 24 (ordering a dismissal response brief by January 9, 2017).

48. Complaint, *De la Fuente v. Wyman*, No. 3:16-cv-5801 (W.D. Wash. Sept. 19, 2016), D.E. 1.

49. Temporary Restraining Order Motion, *id.* (Sept. 21, 2016), D.E. 9.

50. Docket Sheet, *id.* (Sept. 19, 2016) (D.E. 18).

51. *Id.*

52. Status Report, *id.* (Oct. 7, 2016), D.E. 21; see Order, *id.* (Oct. 17, 2016), D.E. 22 (scheduling the pretrial conference for December 18, 2017).

53. Complaint, *De la Fuente v. Alcorn*, No. 1:16-cv-1201 (E.D. Va. Sept. 21, 2016), D.E. 1.

54. Motion, *id.* (Sept. 21, 2016), D.E. 3.

the case for hearing on September 23.<sup>55</sup> Judge O'Grady allowed the filing of post-hearing briefs by September 27.<sup>56</sup> On September 30, Judge O'Grady decided, "Though plaintiff raises some interesting questions of law, his complaint does not meet the high standard for a preliminary injunction, and his motion must therefore be DENIED."<sup>57</sup> On November 18, Judge O'Grady granted a motion to amend the complaint following retention of counsel.<sup>58</sup>

### *Litigation in Other States*

The candidate was on the presidential primary and caucus ballots in several states.<sup>59</sup> In other litigation, with somewhat less time pressure, the candidate challenged exclusion from both primary and general elections.

On May 10, Southern District of Iowa Judge Stephanie M. Rose dismissed a pro se action filed by the candidate on February 5 in Iowa complaining that he was excluded from the February 1 Iowa presidential nomi-

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55. Order, *id.* (Sept. 21, 2016), D.E. 5; see Transcript, *id.* (Sept. 23, 2016, filed Sept. 29, 2016), D.E. 16.

56. Minutes, *id.* (Sept. 23, 2016), D.E. 9.

57. Opinion, *id.* (Sept. 30, 2016), D.E. 17.

58. Order, *id.* (Nov. 18, 2016), D.E. 29; see Amended Complaint, *id.* (Dec. 29, 2016), D.E. 30; see also Docket Sheet, *id.* (Sept. 21, 2016) (noting a hearing set for February 17, 2017).

59. See Dan Arestia, *Kasich, Clinton Win in Darien, but Trump Takes State GOP Vote*, Darien Times, Apr. 28, 2016, at A1 (Connecticut); Peter Becker, *Trump Wins in Pike, Wayne; Sanders, Clinton Split*, Hawley News Eagle, Apr. 30, 2016, at 1 (Pennsylvania); Matt Bittle, *Clinton Swept 40 State Legislative Districts, Trump Won in 39*, Del. State News, Apr. 28, 2016, at 10 (Delaware); Trevor Brown, *Cheyenne Democrats Prepare for Record Turnout*, Laramie Boomerang, Apr. 8, 2016, at A6 (Wyoming); Nate Cohn, *Where Democrats Like Clinton the Least*, N.Y. Times, May 10, 2016, at A3 (Oklahoma); *Election Results*, St. Louis Post-Dispatch, Mar. 16, 2016, at A7 (Missouri); Jean Gordon, *March Primary Elections Is Tuesday*, Forest City Daily Courier, Mar. 13, 2016, at A6 (North Carolina); Randy Ludlow, *Buckeye State Picks Clinton Again*, Columbus Dispatch, Mar. 16, 2016, at 1A (Ohio); Ron Maxey, *Mississippi Voters Take to Polls, Cast Ballots*, Commercial Appeal, Mar. 8, 2016, at 5 (Mississippi); Chris Mayhew, *N. Ky. Primary Ballot a Mix of Races*, Cincinnati Enquirer, May 12, 2016, at A2 (Kentucky); *Presidential Primary Results; Maryland 2016*, Balt. Sun, Apr. 27, 2016, at A12 (Maryland); Kaitlyn Schwerts, *Early Voting Starts Tuesday in Arkansas*, Baxter Bull., Feb. 13, 2016, at A10 (Arkansas); Jeff Selle, *Democrats Double Down*, Coeur d'Alene Press, Mar. 21, 2016, at A1 (Idaho); Richard Sharkey, *Cruz Won Rapides, but Trump Led Cenla Overall*, Alexandria Daily Town Talk, Mar. 7, 2016, at A6 (Louisiana); Brian Smith, *Primaries See High Turnout, Clerk Says*, Maple Valley News, Mar. 12, 2016, at 2 (Michigan); Gerry Tuoti, *Five Things to Know About the Presidential Primary*, Concord J., Feb. 25, 2016, at 5 (Massachusetts); Jamie Willey, *Sanders Earns Five Delegates at Indy*, Parsons Sun, Mar. 8, 2016, at 1 (Kansas); Phil Willon, *They're Out of the Race but Still on the Ballot*, L.A. Times, Mar. 21, 2016, at B1 (California); Cy Wood, *Super Tuesday Vote Includes Local Races*, Valley Times-News, Feb. 29, 2016, at 1 (Alabama); see also S.C. Preliminary Injunction Motion, *supra* note 29, at 6; S.D. Iowa Complaint, *De la Fuente v. Iowa Democratic Party*, No. 4:16-cv-31 (S.D. Iowa Feb. 5, 2016), D.E. 1 (claiming that the "Plaintiff has been accepted into the Presidential Primary Ballot in twenty-four states and one territory (Alabama, Alaska, Arizona, Arkansas, Colorado, Democrats Abroad, Hawaii, Idaho, Kansas, Kentucky, Louisiana, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Hampshire, North Carolina, Ohio, Oklahoma, Texas, Utah, Vermont, and West Virginia)").

nation caucuses because of contractual breaches that Judge Rose determined were purely state-law claims.<sup>60</sup> An appeal is pending.<sup>61</sup>

Western District of Oklahoma Judge Stephen P. Friot dismissed a June 14 pro se action on July 29, granting a motion to dismiss to which the candidate did not respond.<sup>62</sup> Judge Friot dismissed a subsequent counseled action by the candidate and the Green Party's presidential nominee challenging requirements for the general election ballot: "Plaintiffs have not alleged or otherwise identified any material changes in Oklahoma law, or any other changed circumstances, which would suggest that this action is not precluded under the logic and rulings of existing decisions which hold that Oklahoma's ballot access laws are constitutional."<sup>63</sup> An appeal is pending.<sup>64</sup>

The candidate's counseled motion for injunctive relief against California's signature requirement for independent candidates on the November presidential general election<sup>65</sup> was denied by Central District of California Judge Michael W. Fitzgerald on August 12.<sup>66</sup> An appeal will be heard on March 10, 2017.<sup>67</sup>

In September and October, Western District of Texas Judge Robert Pitman,<sup>68</sup> Middle District of Alabama Judge W. Keith Watkins,<sup>69</sup> Northern District of Illinois Judge Amy J. St. Eve,<sup>70</sup> and Middle District of North Carolina

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60. Opinion, *De la Fuente v. Iowa Democratic Party*, No. 4:16-cv-31 (S.D. Iowa May 10, 2016), D.E. 17; *see* S.D. Iowa Complaint, *supra* note 59.

61. Docket Sheet, *De la Fuente v. Iowa Democratic Party*, No. 16-2693 (8th Cir. June 15, 2016) (noting that the reply brief was filed on September 30, 2016).

62. Opinion, *De la Fuente v. Oklahoma*, No. 5:16-cv-583 (W.D. Okla. July 29, 2016), D.E. 10; *see* Motion to Dismiss, *id.* (July 6, 2016), D.E. 9; Amended Complaint, *id.* (June 14, 2016), D.E. 5; Complaint, *id.* (May 31, 2016), D.E. 1.

63. Opinion at 6, *De la Fuente v. Ziriaux*, No. 5:16-cv-914 (W.D. Okla. Dec. 13, 2016), D.E. 9; Complaint, *id.* (Aug. 9, 2016), D.E. 1.

64. Docket Sheet, *De la Fuente v. Ziriaux*, No. 17-6010 (10th Cir. Jan. 13, 2017).

65. Motion, *De la Fuente v. California*, No. 2:16-cv-3242 (C.D. Cal. Aug. 9, 2016), D.E. 16.

66. Opinion, *id.* (Aug. 12, 2016), D.E. 18, 2016 WL 5340551; *see* Complaint, *id.* (May 11, 2016), D.E. 1; *see also* Amended Complaint, *id.* (Nov. 3, 2016), D.E. 30.

67. Docket Sheet, *De la Fuente v. Padilla*, No. 16-56261 (9th Cir. Sept. 1, 2016); *see* Order, *id.* (Sept. 23, 2016), D.E. 7 (denying the candidate's motion to expedite the appeal).

68. *Kennedy v. Cascos*, \_\_\_ F. Supp. 3d \_\_\_, 2016 WL 5794798 (W.D. Tex. 2016) (opinion filed at W.D. Tex. No. 1:16-cv-1047, D.E. 1) (explaining Judge Pitman's September 28, 2016, oral ruling); *see* Motion, *Kennedy v. Cascos*, No. 1:16-cv-1047 (W.D. Tex. Sept. 8, 2016), D.E. 3; Complaint, *id.* (Sept. 8, 2016), D.E. 1 (counseled complaint by the candidate, a voter, and the American Delta Party, for which the candidate was its presidential nominee); *see also* Jamie Lovegrove, *Independent Candidate Sues for Ballot Spot*, Dallas Morning News, Sept. 20, 2016, at B3.

69. *De la Fuente v. Merrill*, \_\_\_ F. Supp. 3d \_\_\_, 2016 WL 5886885 (M.D. Ala. 2016) (opinion filed at M.D. Ala. No. 2:16-cv-755, D.E. 27); Order, *De la Fuente v. Merrill*, No. 2:16-cv-755 (M.D. Ala. Sept. 30, 2016), D.E. 23; *see* Amended Complaint, *id.* (Sept. 14, 2016), D.E. 7 (counseled complaint by the candidate and a voter); Complaint, *id.* (Sept. 12, 2016), D.E. 1 (same).

70. Opinion, *De la Fuente v. Illinois*, No. 1:16-cv-6984 (N.D. Ill. Oct. 3, 2016), D.E. 17, 2016 WL 5720349; *see* Complaint, *id.* (July 5, 2016), D.E. 1 (pro se).

Judge Thomas D. Schroeder<sup>71</sup> denied the candidate's challenges to sore loser statutes, which prevented the candidate from being on the November 8, 2016, general election ballots because he had been on the states' primary election ballots.

On January 9, 2017, District of Arizona Magistrate Judge John Z. Boyle denied the candidate's November 2, 2016, motion to amend<sup>72</sup> his July 20, 2016, pro se complaint:<sup>73</sup> "appearing to acknowledge that his case would not be litigated in time for him to appear on the 2016 presidential ballot, [he sought] to amend his Complaint to add a claim for compensatory damages,"<sup>74</sup> but such a claim is barred by the Eleventh Amendment.<sup>75</sup> Moreover, although the election had passed and the candidate's claim for injunctive relief was moot, Judge Boyle also determined that the claim was barred by laches because it was filed four months after the deadline for filing a petition for new party recognition and not served for another six weeks.<sup>76</sup>

A pro se action in the Middle District of Tennessee was dismissed.<sup>77</sup> Pending are pro se actions in the Middle District of Tennessee,<sup>78</sup> the Southern District of Indiana,<sup>79</sup> the District of Hawaii,<sup>80</sup> and the District of Maryland.<sup>81</sup>

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71. Opinion, *De la Fuente v. North Carolina*, No. 1:16-cv-470 (M.D.N.C. Oct. 21, 2016), D.E. 20; Opinion, *id.* (Oct. 11, 2016), D.E. 19, 2016 WL 5922314; *see* Amended Complaint, *id.* (June 15, 2016), D.E. 5; Complaint, *id.* (May 16, 2016), D.E. 1 (counseled).

72. Amendment Motion, *De la Fuente v. Arizona*, No. 2:16-cv-2419 (D. Ariz. Nov. 2, 2016), D.E. 11.

73. Complaint, *id.* (July 20, 2016), D.E. 1.

74. Opinion at 2, *id.* (Jan. 9, 2017), D.E. 18, 2017 WL 75846.

75. *Id.* at 3.

76. *Id.* at 4–5.

77. Order, *De la Fuente v. Democratic Party of Tenn.*, No. 3:16-cv-189 (M.D. Tenn. Dec. 20, 2016), D.E. 28, 2016 WL 7386490, *adopting because no objection was filed* Report and Recommendation, *id.* (Oct. 24, 2016), D.E. 25.

78. Amended Complaint, *id.* (Apr. 1, 2016), D.E. 14; Complaint, *id.* (Feb. 5, 2016), D.E. 1.

79. Complaint, *De la Fuente v. Indiana*, No. 1:16-cv-1789 (S.D. Ind. July 5, 2016), D.E. 1 (alleging "a significant modicum of support nationally and in the State of Indiana").

80. Complaint, *De la Fuente v. Nago*, No. 1:16-cv-398 (D. Haw. July 19, 2016), D.E. 1.

81. Complaint, *De la Fuente v. Lamone*, No. 1:16-cv-2743 (D. Md. Aug. 2, 2016), D.E. 1 (alleging a desire "to have his name put on the 2016 Presidential ballot in Arizona").