

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 prospective candidate for president in 2016 filed federal complaints challenging his exclusion from primary election and general election ballots in several states. In 2018, the candidate achieved changes to ballot access rules in Virginia and Washington.

Subject: Getting on the ballot. *Topics:* Getting on the ballot; pro se party; laches; primary election; matters for state courts; Electoral College; absentee ballots; interlocutory appeal; attorney fees.

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. The candidate achieved ballot-access rules victories in Virginia¹ and Washington² in 2018.

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.³ Three days later, the plaintiffs filed motions for preliminary injunctive relief⁴ and expedited consideration.⁵

On January 23, Judge Robert L. Hinkle denied the plaintiffs a preliminary injunction without prejudice: "The plaintiffs have tendered no evidence that

1. Consent Decree, *De la Fuente v. Alcorn*, No. 1:16-cv-1201 (E.D. Va. Jan. 4, 2018), D.E. 56.

2. Opinion, *De la Fuente v. Wyman*, No. 3:16-cv-5801 (W.D. Wash. Feb. 22, 2018), D.E. 43, 2018 WL 1014545.

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

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

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

Mr. De La Fuente has any support at all beyond the seven voters who are plaintiffs in this action.”⁶ 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.⁷ 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.⁸ On June 26, Judge Hinkle issued an order to show cause why the second case should not be dismissed for lack of prosecution.⁹ The case concluded on August 1 by voluntary dismissal.¹⁰ The candidate qualified for the general election ballot in Florida as a nominee of the Reform Party.¹¹

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.¹² On the following day, the plaintiffs filed a motion for a preliminary injunction and a permanent injunction.¹³

Judge Richard W. Story heard the case on February 4 and denied the plaintiffs injunctive relief because of laches.¹⁴ 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.¹⁵

As it happened, the plaintiffs’ candidate was included on the Georgia ballot after all.¹⁶ An appeal was voluntarily dismissed.¹⁷

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

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

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

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

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

11. *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.

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

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

14. Opinion, *id.* (Feb. 4, 2016), D.E. 8 [hereinafter Story Opinion]; 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.

15. Story Opinion, *supra* note 14, at 4; *see* Opinion, *De la Fuente*, No. 1:16-cv-256 (N.D. Ga. Mar. 7, 2016), D.E. 21 (denying reconsideration).

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

17. 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.

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.¹⁸ Among other things, the complaint asked for emergency mandamus relief.¹⁹

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.²⁰ Four days later, Judge Cohen observed by order that the complaint sought emergency relief, but no motion for such relief had been presented to the court.²¹ On the next day, the candidate filed such a motion.²² Judge Cohen gave Georgia's secretary of state six days to respond.²³ Judge Cohen set the case for hearing on August 26.²⁴

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.²⁵ 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."²⁶

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."²⁷ Judge Cohen provisionally granted the secretary a dismissal on

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

19. *Id.* at 8.

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

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

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

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

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

25. Transcript at 3–4, *id.* (Aug. 26, 2016, filed Sept. 21, 2016), D.E. 28 [hereinafter N.D. Ga. Transcript].

26. *Id.* at 4.

27. Opinion, *id.* (Aug. 30, 2016), D.E. 21; *see* N.D. Ga. Transcript *supra* note 25, at 32 (noting that the general assembly has "a right to be dumb; they just don't have a right to do something that's unconstitutional"); *see also* *De la Fuente v. Kemp*, 300 Ga. 79, 793 S.E.2d 89 (2016) (affirming the superior court's not reviewing rejection of the candidate's ballot petition for too few signatures because the candidate had not timely filed a proposed slate of electors).

On February 15, 2017, the court of appeals determined that because the 2016 election was over and the 2020 election was far enough in the future the candidate had not shown a current need for a preliminary injunction. *De la Fuente v. Kemp*, 679 F. App'x 931 (11th Cir. 2017); *see* Order, *De la Fuente v. Kemp*, No. 16-15880 (11th Cir. Oct. 7, 2016) (denying an injunction pending appeal).

March 17, 2017,²⁸ and seven months later denied a motion to amend the complaint.²⁹

South Carolina

District of South Carolina Judge Cameron McGowan Currie, on February 25, 2016, denied the prospective candidate a preliminary injunction to either put him on South Carolina's primary ballot or reschedule the election.³⁰ 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.³¹ The candidate filed his pro se complaint³² 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 injunction³³ on February 22.³⁴ Judge Currie found an "inexcusable lack of diligence" in his pursuit of federal court relief.³⁵

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.³⁶ She granted summary judgment to the party on July 20, 2017, noting that "it is undisputed Plaintiff had no actual, non-electronic presence in South Carolina."³⁷

New Mexico

District of New Mexico Judge Robert C. Brack denied the pro se prospective candidate immediate relief on June 3, 2016.³⁸ "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."³⁹ As to the merits of the May 6 complaint, "Plaintiff has cited no precedent to support its requested remedy to halt an ongoing election."⁴⁰

28. Opinion, *De la Fuente*, No. 1:16-cv-2937 (N.D. Ga. Mar. 17, 2017), D.E. 41, 2017 WL 2289307 (allowing the candidate two weeks to file a promised motion to amend the complaint).

29. Opinion, *id.* (Oct. 13, 2017), D.E. 48.

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

31. *Id.* at 800–03.

32. 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.

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

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

35. *Id.* at 805.

36. 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.

37. Opinion at 7, *id.* (July 20, 2017), D.E. 128, 2017 WL 3085750; see Opinion, *id.* (Oct. 12, 2017), D.E. 134 (denying reconsideration).

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

39. *Id.* at 1–2.

40. *Id.* at 4.

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].⁴¹

The candidate qualified for New Mexico's general election ballot as the nominee of the American Delta Party, which the candidate founded.⁴² Later reviewing the merits of the complaint, Judge Brack dismissed the action on May 19, 2017, finding New Mexico's ballot access requirements to be constitutional.⁴³ The court of appeals affirmed the dismissal without oral argument.⁴⁴

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 off of the general election ballot because of his defeat in the primary election.⁴⁵ Pursuant to *Railroad Commission v. Pullman Co.*,⁴⁶ Judge Jones decided that application of the sore loser statute to the candidate's case should be resolved first by the commonwealth courts.⁴⁷ Following an unsuccessful state court action,⁴⁸ Judge Jones determined on August 21, 2017, that the sore loser statute was constitutional and that it was constitutional for a political party to restrict gatherers of primary election ballot petition signatures to mem-

41. *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.

42. See Deborah Baker, *Rejected PRC Hopeful*, Albuquerque J., July 9, 2016, at C1; Di-
anne L. Stallings, *Dates and Information to Note for Fall Election*, Ruidoso News, Oct. 12,
2016, at A6.

43. Opinion, *De la Fuente Guerra*, No. 1:16-cv-393 (D.N.M. May 19, 2017), D.E. 53, 2017
WL 3172788; see Opinion, *id.* (Dec. 8, 2017), D.E. 58, 2017 WL 6271254 (denying reconsid-
eration).

44. *De la Fuente Gerra v. Toulouse-Oliver*, 752 F. App'x 579 (10th Cir. 2018).

45. *De la Fuente v. Cortés*, 207 F. Supp. 3d 441 (M.D. Pa. 2016); *De la Fuente v. Cortés*,
261 F. Supp. 3d 543, 546 (M.D. Pa. 2017); 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).

46. 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.").

47. *De la Fuente*, 207 F. Supp. 3d 441 (M.D. Pa. 2016).

48. 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.

bers of the party.⁴⁹ On August 7, 2018, the court of appeals affirmed dismissal of the case.⁵⁰

South Dakota

The candidate filed a counseled complaint in the District of South Dakota on August 24, 2016, challenging the state's ballot petition signature requirements as excessively strict as to form and notarization requirements.⁵¹ On the following day, Judge Roberto A. Lange set the case for hearing five days after that.⁵² On August 26, the candidate filed a motion for emergency preliminary injunctive relief.⁵³ At the end of the hearing, Judge Lange denied the candidate relief for reasons explained at the hearing.⁵⁴ A transcript of the hearing was not filed.⁵⁵

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, 2016.⁵⁶ The candidate filed a motion for a temporary restraining order two days later.⁵⁷ Five days after that, Judge Benjamin H. Settle heard the case and denied the motion "for the reasons stated on the record."⁵⁸ A transcript of the hearing was not filed.⁵⁹ The case continued, because the candidate intends to run again in 2020.⁶⁰

Virginia

A September 21, 2016, 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.⁶¹ With his complaint, the candidate filed a motion for emergency preliminary injunctive relief placing his name on the general election ballot.⁶² That day, Judge Liam O'Grady set

49. *De la Fuente*, 261 F. Supp. 3d 543; Opinion, *De la Fuente*, No. 1:16-cv-1696 (M.D. Pa. Nov. 20, 2017), D.E. 47 (denying amendment of the judgment); see Second Amended Complaint, *id.* (May 14, 2017), D.E. 33.

50. *De la Fuente v. Cortés*, 751 F. App'x 269 (3d Cir. 2018) (amended Oct. 26, 2018).

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

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

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

54. 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.

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

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

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

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

59. *Id.*

60. Opinion, *id.* (Jan. 31, 2018), D.E. 41, 2018 WL 646958 (narrowing summary judgment issues).

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

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

the case for hearing on September 23.⁶³ Judge O'Grady allowed the filing of post-hearing briefs by September 27.⁶⁴ 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."⁶⁵ On November 18, Judge O'Grady granted a motion to amend the complaint following retention of counsel.⁶⁶

Litigation in Other States

The candidate was on the presidential primary and caucus ballots in several states.⁶⁷ In other litigation, with somewhat less time pressure, the candidate challenged exclusion from both primary and general elections.

Iowa. On May 10, 2016, Southern District of Iowa Judge Stephanie M. Rose dismissed a pro se action filed by the candidate on February 5 in Iowa

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

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

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

66. Order, *id.* (Nov. 18, 2016), D.E. 29; see Amended Complaint, *id.* (Dec. 29, 2016), D.E. 30; see also Order, *id.* (Mar. 29, 2017), D.E. 39 (denying a motion to dismiss the amended complaint and requiring the defendants to answer).

67. 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 D.S.C. Preliminary Injunction Motion, *supra* note 33, at 6; Complaint, *De la Fuente v. Iowa Democratic Party*, No. 4:16-cv-31 (S.D. Iowa Feb. 5, 2016), D.E. 1 [hereinafter S.D. Iowa Complaint] (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)").

complaining that he was excluded from the February 1 Iowa presidential nomination caucuses because of contractual breaches that Judge Rose determined were purely state-law claims.⁶⁸ The court of appeals affirmed the dismissal on February 27, 2017.⁶⁹

Oklahoma. Western District of Oklahoma Judge Stephen P. Friot dismissed a June 14, 2016, pro se action on July 29, granting a motion to dismiss to which the candidate did not respond.⁷⁰ 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."⁷¹ An appeal was dismissed by stipulation.⁷²

California. The candidate's counseled motion for injunctive relief against California's signature requirement for independent candidates in the November 2016 presidential general election⁷³ was denied by Central District of California Judge Michael W. Fitzgerald on August 12.⁷⁴ Following the election, an appeal was dismissed as moot.⁷⁵ Judge Fitzgerald dismissed the action on October 4, 2017, concluding that a requirement of signatures from one percent of registered voters—178,039 in 2016—was not a severe burden, and it bore a reasonable relationship to a legitimate interest in maintaining an uncluttered and manageable ballot.⁷⁶ A second appeal is pending.⁷⁷

68. 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 67.

69. *De la Fuente v. Iowa Democratic Party*, 678 F. App'x 450 (8th Cir. 2017).

70. 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.

71. Opinion at 6, *De la Fuente v. Ziriaux*, No. 5:16-cv-914 (W.D. Okla. Dec. 13, 2016), D.E. 9, 2016 WL 10537015; Complaint, *id.* (Aug. 9, 2016), D.E. 1.

72. Order, *De la Fuente v. Ziriaux*, No. 17-6010 (10th Cir. May 10, 2017).

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

74. Opinion, *id.* (Aug. 12, 2016), D.E. 18, 2016 WL 5340551; *De la Fuente v. Padilla*, 686 F. App'x 383, 383 (9th Cir. 2017) (noting ample time to resolve a challenge to the signature requirement for the 2020 election); see Complaint, *De la Fuente*, No. 2:16-cv-3242 (C.D. Cal. May 11, 2016), D.E. 1; see also Amended Complaint, *id.* (Nov. 3, 2016), D.E. 30.

75. *De la Fuente*, 686 F. App'x 383; see www.ca9.uscourts.gov/media/view_video.php?pk_vid=0000011187 (video recording of the March 10, 2017, oral argument); Order, *De la Fuente v. Padilla*, No. 16-56261 (9th Cir. 9th Cir. Sept. 23, 2016), D.E. 7 (denying the candidate's motion to expedite the appeal).

76. *De la Fuente v. California*, 278 F. Supp. 3d 1146 (C.D. Cal. 2017).

77. Docket Sheet, *De la Fuente v. Padilla*, No. 17-56668 (9th Cir. Nov. 3, 2017) (noting that the answering brief is due on March 12, 2018).

Sore Loser Statutes. In September and October 2016, Western District of Texas Judge Robert Pitman,⁷⁸ Middle District of Alabama Judge W. Keith Watkins,⁷⁹ Northern District of Illinois Judge Amy J. St. Eve,⁸⁰ and Middle District of North Carolina Judge Thomas D. Schroeder⁸¹ 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.

Tennessee. A pro se action in the Middle District of Tennessee was dismissed on December 20, 2016.⁸²

Arizona. On January 9, 2017, District of Arizona Magistrate Judge John Z. Boyle denied the candidate's November 2, 2016, motion to amend⁸³ his July 20, 2016, pro se complaint:⁸⁴ "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,"⁸⁵ but such a claim is barred by the Eleventh Amendment.⁸⁶ 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 peti-

78. *Kennedy v. Cascos*, 214 F. Supp. 3d 559 (W.D. Tex. 2016) (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 the presidential nominee); see also Jamie Lovegrove, *Independent Candidate Sues for Ballot Spot*, Dallas Morning News, Sept. 20, 2016, at B3.

After further briefing, Judge Pitman dismissed the action on May 18, 2017, and he denied a motion to amend the complaint with claims pertaining to the 2020 election, because Judge Pitman found the candidate's 2020 campaign plans to be too speculative. Opinion, *Kennedy v. Cascos*, No. 1:16-cv-1047 (W.D. Tex. May 18, 2017), D.E. 44, 2017 WL 2223056.

79. *De la Fuente v. Merrill*, 214 F. Supp. 3d 1241 (M.D. Ala. 2016); Order, *De la Fuente v. Merrill*, No. 2:16-cv-755 (M.D. Ala. Sept. 30, 2016), D.E. 23; see Opinion, *id.* (Aug. 30, 2017), D.E. 35, 2017 WL 3765744 (dismissing the action); 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).

80. 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).

81. Opinion, *De la Fuente v. North Carolina*, No. 1:16-cv-470 (M.D.N.C. 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).

82. 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, 2016 WL 7395797; see Amended Complaint, *id.* (Apr. 1, 2016), D.E. 14; Complaint, *id.* (Feb. 5, 2016), D.E. 1.

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

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

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

86. *Id.* at 3.

tion for new party recognition and not served for another six weeks.⁸⁷ Other claims remain in litigation.⁸⁸

Hawaii. On March 28, 2017, District of Hawaii Judge Leslie E. Kobayashi dismissed the candidate's July 19, 2016, pro se action alleging that the Hawaii election statutes make "it impossible for voters to respond to current political developments by forming a new party during an election year."⁸⁹ Judge Kobayashi decided that Hawaii's early deadline for establishing a new party did not violate the First Amendment, and the signature requirement was not discriminatory.⁹⁰ "Although unlikely, it is arguably possible that Plaintiff's claims—insofar as they seek prospective declaratory relief—can be cured by amendment."⁹¹ In June 2017, the plaintiffs withdrew a May motion to amend the complaint,⁹² and Judge Kobayashi dismissed the action with prejudice in July.⁹³

Maryland. District of Maryland Judge Ellen Lipton Hollander dismissed the candidate's August 2, 2016, pro se complaint on June 5, 2017, as moot.⁹⁴ The Tuesday complaint was filed one day after the deadline for an independent candidate to file ballot petition signatures for the November election.⁹⁵ At the end of the previous week, another federal suit by an independent candidate for the U.S. Senate was settled with a temporary drop in the number of signatures required to get on the ballot from approximately 38,000 to 10,000.⁹⁶ The relevant statute was amended in 2017 to state that 10,000 signatures would thereafter be sufficient.⁹⁷

Indiana. On November 9, 2017, Southern District of Indiana Magistrate Judge Debra McVicker Lynch recommended dismissal with prejudice of the candidate's July 5, 2016, pro se action "because of the plaintiff's consistent failure to meet deadlines and to prosecute his claims."⁹⁸ On November 16, District Judge Tanya Walton Pratt concluded, "Because the claims are moot,

87. *Id.* at 4–5.

88. Second Amended Complaint, *id.* (Oct. 17, 2018), D.E. 54; Order, *id.* (Oct. 17, 2018), D.E. 53 (noting that dispositive motions are due on November 29, 2018).

89. Opinion, *De la Fuente v. Nago*, No. 1:16-cv-398 (D. Haw. Mar. 28, 2017), D.E. 25 [hereinafter *D. Haw. Opinion*], 2017 WL 1159094; Complaint at 1, *id.* (July 19, 2016), D.E. 1.

90. *D. Haw. Opinion*, *supra* note 89.

91. *Id.* at 18.

92. Motion to Withdraw, *De la Fuente*, No. 1:16-cv-398 (D. Haw. June 7, 2017), D.E. 31; *see* Docket Sheet, *id.* (July 19, 2016) (D.E. 32, order granting a motion to withdraw a motion to amend the complaint); Motion to Amend, *id.* (May 9, 2017), D.E. 28.

93. Order, *id.* (July 7, 2017), D.E. 33.

94. Opinion, *De la Fuente v. Lamone*, No. 1:16-cv-2743 (D. Md. June 5, 2017), D.E. 14 [hereinafter *D. Md. Opinion*], 2017 WL 2439143; Complaint, *id.* (Aug. 2, 2016), D.E. 1 (alleging a desire "to have his name put on the 2016 Presidential ballot in Arizona").

95. *D. Md. Opinion*, *supra* note 94, at 1–2 & n.1.

96. *Id.* at 3–5; *see* Stipulated Dismissal, *Dorsey v. Lamone*, No. 1:15-cv-2170 (D. Md. Sept. 28, 2016), D.E. 22; *see also* Complaint, *id.* (July 24, 2015), D.E. 1.

97. *D. Md. Opinion*, *supra* note 94, at 5–6.

98. Opinion, *De la Fuente v. Indiana*, No. 1:16-cv-1789 (S.D. Ind. Nov. 9, 2017), D.E. 29; Complaint, *id.* (July 5, 2016), D.E. 1 (alleging "a significant modicum of support nationally and in the State of Indiana").

the Court need not address the Magistrate Judge's Recommendation. However, if the case were not dismissed for lack of jurisdiction, it would be dismissed with prejudice based on De La Fuente's failure to litigate."⁹⁹

Victories

The Virginia case was resolved on January 4, 2018, by a consent decree requiring Virginia to stop asking signers of ballot petitions to provide the last four digits of their Social Security numbers and providing for a payment of \$43,409.78 to the candidate in attorney fees.¹⁰⁰

On February 22, Judge Settle held unconstitutional Washington's requirement of newspaper notice ten days in advance of local nominating conventions for minor party candidates.¹⁰¹ Failing to satisfy an easy hurdle, Washington was not able to explain why a candidate who has collected a sufficient number of ballot petition signatures to qualify for the ballot should be excluded from the ballot for failure to sufficiently inform the public that the candidate was collecting signatures from others.¹⁰² Washington's appeal is pending.¹⁰³

99. Opinion, *id.* (Nov. 16, 2017), D.E. 30.

100. Consent Decree, *De la Fuente v. Alcorn*, No. 1:16-cv-1201 (E.D. Va. Jan. 4, 2018), D.E. 56.

101. Opinion, *De la Fuente v. Wyman*, No. 3:16-cv-5801 (W.D. Wash. Feb. 22, 2018), D.E. 43, 2018 WL 1014545.

102. *Id.* at 10–13.

103. Docket Sheet, *De la Fuente v. Wyman*, No. 18-35208 (9th Cir. Mar. 15, 2018) (noting that the reply brief was filed on October 9, 2018).