

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), *De La Fuente v. Alcorn* (Liam O'Grady, E.D. Va. 1:16-cv-1201), and *Alliance Party v. District of Columbia Board of Elections* (James E. Boasberg, D.D.C. 1:20-cv-2319)

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 a change to ballot-access rules in Virginia. Litigation by the candidate for the 2020 election was largely unsuccessful.

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 a ballot-access rules victory in Virginia in 2018.¹

The candidate's federal actions in 2020 were unsuccessful, although one was mooted by the success of other plaintiffs in state court.

The 2016 Presidential Election

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 Democratic Party's exclusion of the candidate from the March 15 primary election.² Three days later, the plain-

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

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

tiffs filed motions for preliminary injunctive relief³ and expedited consideration.⁴

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.”⁵ 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.⁶ 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.⁷ On June 26, Judge Hinkle issued an order to show cause why the second case should not be dismissed for lack of prosecution.⁸ The case concluded on August 1 by voluntary dismissal.⁹ The candidate qualified for the general-election ballot in Florida as a nominee of the Reform Party.¹⁰

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.¹¹ On the following day, the plaintiffs filed a motion for a preliminary injunction and a permanent injunction.¹²

Judge Richard W. Story heard the case on February 4 and denied the plaintiffs injunctive relief because of laches.¹³ 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 some overseas ballots had already been distributed.¹⁴

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

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

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

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

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

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

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

10. *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.

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

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

13. 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.

14. Story Opinion, *supra* note 13, at 4; *see* Opinion, *De La Fuente*, No. 1:16-cv-256 (N.D. Ga. Mar. 7, 2016), D.E. 21 (denying reconsideration).

As it happened, the plaintiffs' candidate was included on the Georgia ballot after all.¹⁵ An appeal was voluntarily dismissed.¹⁶

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.¹⁷ Among other things, the complaint asked for emergency mandamus relief.¹⁸

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.¹⁹ 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.²⁰ On the next day, the candidate filed such a motion.²¹ Judge Cohen gave Georgia's secretary of state six days to respond²² and set the case for hearing on August 26.²³

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.²⁴ 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."²⁵

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."²⁶ Judge Cohen provisionally granted the secretary a dismissal on

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

16. Order, *De La Fuente v. Secretary*, No. 16-10713 (11th Cir. Apr. 1, 2016), D.E. 24; see also *Stipulated Dismissal, De La Fuente*, No. 1:16-cv-256 (N.D. Ga. Apr. 22, 2016), D.E. 26.

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

18. *Id.* at 8.

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

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

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

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

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

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

25. *Id.* at 4.

26. Opinion, *id.* (Aug. 30, 2016), D.E. 21; see N.D. Ga. Transcript *supra* note 24, 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).

March 17, 2017,²⁷ and seven months later denied a motion to amend the complaint.²⁸

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-election ballot or reschedule the election.²⁹ 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.³⁰ The candidate filed his pro se complaint on February 2, twenty-five days in advance of the primary election and fifty-two days following his exclusion from the ballot.³¹ He filed a motion for a preliminary injunction on February 22.³² Judge Currie found an "inexcusable lack of diligence" in his pursuit of federal court relief.³³

On November 9, however, she denied the state party's eighty-eight-word October 3 motion for summary judgment because no brief or evidence was filed in support of the motion.³⁴ 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."³⁵

New Mexico

District of New Mexico Judge Robert C. Brack denied the pro se prospective candidate immediate relief on June 3, 2016.³⁶ "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

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), D.E. 16 (denying an injunction pending appeal).

27. 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).

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

29. *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").

30. *Id.* at 800–03.

31. 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.

32. Preliminary-Injunction Motion, *id.* (Feb. 22, 2016), D.E. 17 [hereinafter D.S.C. Preliminary-Injunction Motion]; *De La Fuente*, 164 F. Supp. 3d at 797, 804–05.

33. *De La Fuente*, 164 F. Supp. 3d at 805.

34. 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.

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

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

signature.”³⁷ As to the merits of the May 6 complaint, “Plaintiff has cited no precedent to support its requested remedy to halt an ongoing election.”³⁸

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].³⁹

The candidate qualified for New Mexico’s general-election ballot as the nominee of the American Delta Party, which the candidate founded.⁴⁰ 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.⁴¹ The court of appeals affirmed the dismissal without oral argument.⁴²

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.⁴³ Pursuant to *Railroad Commission v. Pullman Co.*,⁴⁴ Judge Jones decided that application of the sore loser statute to the candidate’s case should be resolved first by the commonwealth courts.⁴⁵ Following an unsuccessful

37. *Id.* at 1–2.

38. *Id.* at 4.

39. *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.

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

41. 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 reconsideration).

42. *De La Fuente Guerra v. Toulouse-Oliver*, 752 F. App’x 579 (10th Cir. 2018).

43. *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).

Judge Jones retired on August 1, 2021. Federal Judicial Center Biographical Directory of Article III Federal Judges [hereinafter FJC Biographical Directory], www.fjc.gov/history/judges.

44. 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*, 207 F. Supp. 3d 441 (M.D. Pa. 2016).

state-court action,⁴⁶ 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 members of the party.⁴⁷ On August 7, 2018, the court of appeals affirmed dismissal of the case.⁴⁸

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.⁴⁹ On the following day, Judge Roberto A. Lange set the case for hearing five days after that.⁵⁰ On August 26, the candidate filed a motion for emergency preliminary injunctive relief.⁵¹ At the end of the hearing, Judge Lange denied the candidate relief for reasons explained at the hearing.⁵² A transcript of the hearing was not filed.⁵³

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.⁵⁴ With his complaint, the candidate filed a motion for emergency preliminary injunctive relief placing his name on the general-election ballot.⁵⁵ That day, Judge Liam O'Grady set the case for hearing on September 23.⁵⁶ He allowed the filing of posthearing briefs by September 27.⁵⁷ On September 30, he 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."⁵⁸ On November 18, Judge O'Grady granted a motion to amend the complaint following retention of counsel.⁵⁹

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. *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.

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

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

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

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

52. 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.

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

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

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

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

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

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

59. Order, *id.* (Nov. 18, 2016), D.E. 29; see Amended Complaint, *id.* (Dec. 29, 2016), D.E.

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, 2016.⁶⁰ The candidate filed a motion for a temporary restraining order two days later.⁶¹ Five days after that, Judge Benjamin H. Settle heard the case and denied the motion "for the reasons stated on the record."⁶² A transcript of the hearing was not filed.⁶³ The case continued, because the candidate intended to run again in 2020.⁶⁴

On February 22, 2018, Judge Settle held unconstitutional Washington's requirement of newspaper notice ten days before local nominating conventions for minor party candidates.⁶⁵ Failing to satisfy an easy hurdle, Washington was not able to explain why a candidate who 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.⁶⁶

The court of appeals acknowledged, "It may be that Washington's requirement is somewhat antiquated, and that publishing newspaper notices does little in this day and age to alert Washington's voters to ongoing political activity."⁶⁷ But "requiring notice about independent candidate and minor party conventions provides voters with the opportunity to participate and potentially learn about less well-publicized candidates."⁶⁸ "In this case, Washington's notice requirement imposes only a minimal burden on independent and minor party candidates' free speech rights."⁶⁹ So the court of appeals ordered summary judgment for Washington.⁷⁰

Litigation in Other States

The candidate was on the presidential primary and caucus ballots in several states.⁷¹ In other litigation, with somewhat less time pressure, the candidate challenged exclusion from both primary and general elections.

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).

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

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

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

63. *Id.*

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

65. Opinion, *id.* (Feb. 22, 2018), D.E. 43, 2018 WL 1014545.

66. *Id.* at 10–13.

67. *De La Fuente v. Wyman*, 773 F. App'x 868, 870 (9th Cir. 2019).

68. *Id.* at 869–70.

69. *Id.* at 869.

70. *Id.* at 870.

71. *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

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, 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.⁷² The court of appeals affirmed the dismissal on February 27, 2017.⁷³

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.⁷⁴ 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."⁷⁵ An appeal was dismissed by stipulation.⁷⁶

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 32, 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 [*sic*] (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)").

72. Opinion, *De La Fuente*, No. 4:16-cv-31 (S.D. Iowa May 10, 2016), D.E. 17; see S.D. Iowa Complaint, *supra* note 71.

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

74. 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.

75. Opinion at 6, *De La Fuente v. Ziriaux*, No. 5:16-cv-914 (W.D. Okla. Dec. 13, 2016),

California. The candidate's counseled motion for injunctive relief against California's signature requirement for independent candidates in the November 2016 presidential general election⁷⁷ was denied by Central District of California Judge Michael W. Fitzgerald on August 12.⁷⁸ Following the election, an appeal was dismissed as moot.⁷⁹ 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.⁸⁰ On July 19, 2019, the court of appeals agreed.⁸¹

Sore-Loser Statutes. In September and October 2016, Western District of Texas Judge Robert Pitman,⁸² Middle District of Alabama Judge W. Keith Watkins,⁸³ Northern District of Illinois Judge Amy J. St. Eve,⁸⁴ and Middle District of North Carolina Judge Thomas D. Schroeder⁸⁵ denied the candidate's challenges to sore-loser statutes, which prevented the candidate from

D.E. 9, 2016 WL 10537015; Complaint, *id.* (Aug. 9, 2016), D.E. 1.

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

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

78. 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.

79. *De La Fuente*, 686 F. App'x 383; see Order, *De La Fuente v. Padilla*, No. 16-56261 (9th Cir. Sept. 23, 2016), D.E. 7 (denying the candidate's motion to expedite the appeal).

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

81. *De La Fuente v. Padilla*, 930 F.3d 1101 (9th Cir. 2019).

82. *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 he 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.

83. *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).

84. 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 St. Eve was elevated to the court of appeals on May 23, 2018. FJC Biographical Directory, *supra* note 43.

85. 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).

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, 2016.⁸⁶

Arizona. On January 9, 2017, District of Arizona Magistrate Judge John Z. Boyle denied the candidate's November 2, 2016, motion to amend⁸⁷ his July 20 pro se complaint:⁸⁸ "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,"⁸⁹ but such a claim is barred by the Eleventh Amendment.⁹⁰ 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.⁹¹ Judge Boyle dismissed remaining claims on June 11, 2019, finding Arizona's interests sufficient to justify the candidate's burdens in getting on Arizona's ballot.⁹² An appeal was dismissed for lack of prosecution.⁹³

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."⁹⁴ 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.⁹⁵ "Although unlikely, it is arguably possible that Plaintiff's claims—insofar as they seek prospective declaratory relief—can be cured by amendment."⁹⁶ In June 2017, the plaintiffs withdrew a May motion to amend

86. 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.

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

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

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

90. *Id.* at 3.

91. *Id.* at 4–5.

92. Opinion, *id.* (June 11, 2019), D.E. 89, 2019 WL 2437300; *see* Second Amended Complaint, *id.* (Oct. 17, 2018), D.E. 54.

93. Order, *De La Fuente v. Hobbs*, No. 19-16868 (9th Cir. Jan. 9, 2020), D.E. 9.

94. 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.

95. *D. Haw. Opinion*, *supra* note 94.

96. *Id.* at 18.

the complaint,⁹⁷ and Judge Kobayashi dismissed the action with prejudice in July.⁹⁸

Maryland. District of Maryland Judge Ellen Lipton Hollander dismissed the candidate's August 2, 2016, pro se complaint on June 5, 2017, as moot.⁹⁹ The Tuesday complaint was filed one day after the deadline for an independent candidate to file ballot-petition signatures for the November election.¹⁰⁰ 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 10,000.¹⁰¹ The relevant statute was amended in 2017 to state that 10,000 signatures would thereafter be sufficient.¹⁰²

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."¹⁰³ On November 16, District Judge Tanya Walton Pratt concluded, "Because the claims are moot, 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."¹⁰⁴

Victory

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.¹⁰⁵

Unsuccessful Suit for Damages

On April 23, 2019, Judge Rudolph Contreras, in the district court for the District of Columbia, dismissed without prejudice to amend a February 20,

97. 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) (order granting a motion to withdraw a motion to amend the complaint, D.E. 32); Motion to Amend, *id.* (May 9, 2017), D.E. 28.

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

99. 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").

100. D. Md. Opinion, *supra* note 99, at 1–2 & n.1.

101. *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.

102. D. Md. Opinion, *supra* note 99, at 5–6.

103. 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").

Judge Lynch retired on October 31, 2022. Press Release, www.insd.uscourts.gov/sites/insd/files/Press%20Release%20-%20Lynch%20Retirement%20Event.pdf.

104. Opinion, *De La Fuente*, No. 1:16-cv-1789 (S.D. Ind. Nov. 16, 2017), D.E. 30.

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

2018, pro se complaint by De La Fuente against the Democratic Party that sought damages for allegedly thwarting his presidential campaign.¹⁰⁶ As an opportunity to seek leave to amend the complaint remained, the court of appeals determined on December 29, 2020, that it did not have jurisdiction over a filed appeal.¹⁰⁷ De La Fuente made no attempt to amend the complaint.¹⁰⁸

The 2020 Presidential Election

De La Fuente's lawsuits regarding the 2020 presidential election included one unsuccessful emergency case and a few other cases that were not emergencies.

The District of Columbia's Presidential Election

De La Fuente and the Alliance Party filed a federal complaint in the district court for the District of Columbia on August 21, 2020, complaining that—in a move prompted by social distancing made necessary by the global Covid-19 infectious pandemic—the district's reduction in the number of signatures required to get on the general-election ballot as an independent or minor-party candidate did not go into effect until one day after the August 5 due date to submit the signatures.¹⁰⁹ Five days later, the plaintiffs filed a corrected complaint.¹¹⁰ Two days after that, the plaintiffs filed a motion for a temporary restraining order or a preliminary injunction.¹¹¹

Judge James E. Boasberg set the case for a telephonic hearing on September 3.¹¹² At the hearing, Judge Boasberg denied the plaintiffs immediate relief.¹¹³ He dismissed the action on December 7 for failure to respond to a motion to dismiss it.¹¹⁴

Ballot-Petition Signature Requirement in Arizona and Virginia

De La Fuente and the Alliance Party had filed a federal complaint in the District of Arizona on June 29 seeking judicial relief from Arizona's signature requirements for independent and minor-party presidential candidates, including among their requested forms of relief a temporary restraining order or a preliminary injunction.¹¹⁵ On the day that the complaint was filed, Judge

106. Opinion, *De La Fuente v. DNC Services Corp.*, No. 1:18-cv-336 (D.D.C. Apr. 23, 2019), D.E. 21, 2019 WL 1778948; see Opinion, *id.* (Aug. 2, 2019), D.E. 28, 2019 WL 3536612 (denying a motion to amend the judgment); see also Complaint, *id.* (Feb. 20, 2018), D.E. 1.

107. *De La Fuente v. DNC Services Corp.*, 832 F. App'x 2 (D.C. Cir. 2020).

108. Docket Sheet, *De La Fuente*, No. 1:18-cv-336 (D.D.C. Feb. 20, 2018).

109. Complaint, *Alliance Party v. D.C. Bd. of Elections*, No. 1:20-cv-2319 (D.D.C. Aug. 21, 2020), D.E. 1.

110. Corrected Complaint, *id.* (Aug. 26, 2020), D.E. 2.

111. Motion, *id.* (Aug. 28, 2020), D.E. 4.

112. Docket Sheet, *id.* (Aug. 21, 2020).

113. *Id.*

114. *Id.*

115. Complaint, *De La Fuente v. Hobbs*, No. 2:20-cv-1276 (D. Ariz. June 29, 2020), D.E. 1.

Michael T. Liburdi issued in the docket sheet an order that immediate injunctive relief would not be considered without a motion.¹¹⁶ Judge Liburdi approved a voluntary dismissal on October 2.¹¹⁷

In 2021, Eastern District of Virginia Judge O'Grady dismissed a similar July 9, 2020, complaint for failure to effect service of process.¹¹⁸

California's Attempt to Require Tax Returns for Presidential Candidates

On July 30, 2019, California enacted the Presidential Tax Transparency and Accountability Act, which would require presidential primary-election candidates to publicly disclose their tax returns for the previous five years.¹¹⁹ De La Fuente challenged the statute in the Southern District of California on the day that the statute was enacted as a violation of the federal Constitution and as a violation of the confidentiality of federal tax returns.¹²⁰ California's secretary of state persuaded Judge William Q. Hayes to transfer the case to the Eastern District, which includes the capital and where four similar actions were pending:¹²¹ an action filed on August 1 by four voters¹²² and three actions filed on August 6¹²³ by President Trump,¹²⁴ the Republican Party and three voters,¹²⁵ and another voter.¹²⁶ An action filed on August 19 was dismissed voluntarily a few days later.¹²⁷

Judge Morrison C. England, Jr., issued a preliminary injunction on October 1 against enforcement of the act as an unconstitutional attempt by a state to impose a qualification criterion on the federal office of President.¹²⁸ The

116. Docket Sheet, *id.* (June 29, 2020) (D.E. 6).

117. Order, *id.* (Oct. 2, 2020), D.E. 9.

118. Order, *Alliance Party v. Va. State Bd. of Elections*, No. 1:20-cv-774 (E.D. Va. Apr. 20, 2021), D.E. 5; Complaint, *id.* (July 9, 2020), D.E. 1.

119. *Griffin v. Padilla*, 408 F. Supp. 3d 1169, 1172–73 (E.D. Cal. 2019); see *Patterson v. Padilla*, 8 Cal. 5th 220, 451 P.3d 1171, 254 Cal. Rptr. 3d 816 (2019); see also Jennifer Medina & Annie Karni, *Want to Be on Ballot? Tax Returns Are Needed*, N.Y. Times, July 31, 2019, at A20.

120. Complaint, *De La Fuente v. Padilla*, No. 3:19-cv-1433 (S.D. Cal. July 30, 2019), D.E. 1.

121. Order, *id.* (Aug. 20, 2019), D.E. 20-1; see Docket Sheet, *De La Fuente v. Padilla*, No. 2:19-cv-1659 (E.D. Cal. Aug. 26, 2019).

122. Complaint, *Griffin v. Padilla*, No. 2:19-cv-1477 (E.D. Cal. Aug. 1, 2019), D.E. 1.

123. See Annie Karni, *Trump Campaign Challenges California's Tax Returns Law*, N.Y. Times, Aug. 7, 2019, at A18; John Myers, *Trump Sues State to Keep Tax Returns Out of View*, L.A. Times, Aug. 7, 2019, at B1; John Wagner, *Trump, RNC Challenge Calif. Law on Tax Returns*, Wash. Post, Aug. 7, 2019, at A18.

124. Complaint, *Trump v. Padilla*, No. 2:19-cv-1501 (E.D. Cal. Aug. 6, 2019), D.E. 1.

125. Complaint, *Melendez v. Newsom*, No. 2:19-cv-1506 (E.D. Cal. Aug. 6, 2019), D.E. 1.

126. Complaint, *Koenig v. Newsom*, No. 2:19-cv-1507 (E.D. Cal. Aug. 6, 2019), D.E. 1.

127. Order, *Raths v. Newsom*, No. 2:19-cv-1604 (E.D. Cal. Aug. 19, 2019), D.E. 12; Complaint, *id.* (Aug. 19, 2019), D.E. 1; see Voluntary Dismissal Motion, *id.* (Aug. 22, 2019), D.E. 9.

128. *Griffin v. Padilla*, 408 F. Supp. 3d 1169 (E.D. Cal. 2019); see John Myers, *State to Appeal After Trump Wins Tax Return Ruling*, L.A. Times, Oct. 3, 2019, at B1.

court of appeals vacated the ruling and dismissed an appeal as moot in light of a decision by California's supreme court.¹²⁹

California's supreme court held on November 21, 2019, that the statute requiring presidential primary-election candidates to publicly disclose their tax returns was inconsistent with California's constitutional requirement that the ballot include all "recognized candidates throughout the nation or throughout California for the office of President of the United States."¹³⁰

Challenges to Exclusion from Republican Primary-Election Ballots

Challenges to the Republican Party's exclusion of De La Fuente from two presidential primary-election ballots were unsuccessful. Northern District of Georgia Judge J.P. Boulee denied De La Fuente a preliminary injunction on January 16, 2020,¹³¹ and dismissed the complaint on July 2.¹³² On April 24, District of Minnesota Judge David S. Doty dismissed De La Fuente's complaint as moot because although the complaint was filed on November 26, 2019, the case was not set for hearing until after the March 3, 2020, election, and De La Fuente had not sought an earlier hearing.¹³³

A December 16, 2019, action filed in the district court for the District of Columbia against President Trump, the Republican National Committee, and the Republican parties of seventeen states, including Georgia, Minnesota, and Washington, was dismissed voluntarily in response to an order to show cause why it should not be dismissed for failure to serve defendants.¹³⁴

An action filed in the Western District of Washington on January 17, 2020, began as an effort to get De La Fuente on the Republican Party's March 10 primary-election ballot.¹³⁵ An amended complaint filed on March 26 added the American Delta Party as a plaintiff and sought to get De La Fuente on Washington's general-election ballot in November.¹³⁶ Judge Settle granted Washington's secretary of state summary judgment on September 18.¹³⁷

129. Order, *Griffin v. Padilla*, No. 19-17000 (9th Cir. Dec. 16, 2019), D.E. 22, 2019 WL 7557783.

130. *Patterson v. Padilla*, 8 Cal. 5th 220, 441 P.3d 1171, 254 Cal. Rptr. 816 (2019); see Maura Dolan & John Myers, *Justices Block Effort for Trump Tax Filings*, L.A. Times, Nov. 22, 2019, at A1.

131. Opinion, *De La Fuente v. Raffensperger*, No. 1:19-cv-5323 (N.D. Ga. Jan. 16, 2020), D.E. 20; see Complaint, *id.* (Nov. 22, 2019), D.E. 1.

132. Opinion, *id.* (July 2, 2020), D.E. 28.

133. Opinion, *De La Fuente v. Simon*, No. 0:19-cv-2995 (D. Minn. Apr. 24, 2020), D.E. 18; see Complaint, *id.* (Nov. 26, 2019), D.E. 1; Docket Sheet, *id.* (Nov. 26, 2019).

134. Voluntary Dismissal, *De La Fuente v. Trump*, No. 1:19-cv-3753 (D.D.C. Apr. 24, 2020), D.E. 6; see Docket Sheet, *id.* (Dec. 16, 2019) (minute order, Apr. 13, 2020); Complaint, *id.* (Dec. 16, 2019), D.E. 1.

135. Complaint, *De La Fuente v. Wyman*, No. 3:20-cv-5045 (W.D. Wash. Jan. 17, 2020), D.E. 1.

136. Amended Complaint, *Am. Delta Party v. Wyman*, *id.* (Mar. 26, 2020), D.E. 21; *Am. Delta Party v. Wyman*, 488 F. Supp. 3d 1018, 1021 (W.D. Wash. 2020).

137. *Am. Delta Party*, 488 F. Supp. 3d 1018.

An appeal was voluntarily dismissed. Order, *Am. Delta Party v. Wyman*, No. 20-35893 (9th Cir. Dec. 10, 2020), D.E. 8.