

FILED

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION

2016 MAR 23 AM 10:44

U.S. DISTRICT COURT  
MIDDLE DISTRICT OF TN

ROQUE "ROCKY" DE LA FUENTE,

PLAINTIFF,

v.

DEMOCRATIC PARTY OF TENNESSEE;  
and TRE HARGETT, SECRETARY OF STATE  
OF TENNESSEE,

DEFENDANT(S).

CASE NO.: 3:16-cv-00189

**PLAINTIFF'S RESPONSE IN OPPOSITION TO  
DEFENDANT TENNESSEE DEMOCRATIC PARTY'S MOTION TO DISMISS**

**INTRODUCTION**

On March 8, 2016, Defendant Tennessee Democratic Party (the "TNDP") filed a motion to dismiss seeking dismissal of all claims against the TNDP pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure. TNDP contends the claims should be dismissed because:

1. This case became moot on March 1, 2016 when the 2016 democratic presidential preference primary election occurred; and
2. The Complaint is void of any wrongdoing by the TNDP.

In response, Plaintiff asserts that TNDP aided Defendant Secretary of State Hargett in his ballot access decision, and respectfully requests the Court for leave to amend the Complaint to request nominal and compensatory damages.

## **ARGUMENT**

### **A. TNDP was an Active Participant in Defendant Hargett's Ballot Access Decision**

Based upon information and belief, Plaintiff asserts that TNDP provided a recommendation to Secretary Hargett which influenced his decision not to include Plaintiff on the Democratic presidential primary ballot. This recommendation contributed to the arbitrary and capricious manner in which Tenn. Code Ann. § 2-5-205(a)(1) was applied to keep Plaintiff off the ballot.

### **B. Plaintiff Requests Leave to Amend the Complaint to Include Nominal and Compensatory Damages**

Plaintiff requests leave to amend his complaint to address some of the issues raised by TNDP in its motion to dismiss.

In support of his request, Plaintiff shows the Court that none of the two defendants have filed an Answer to Plaintiff's original complaint. The only actions taken

by the defendants to respond to this action were the Motions to Dismiss filed by TNDP and Defendant Hargett.

The U.S. Supreme Court determined that "[i]n the absence of . . . undue delay, bad faith or dilatory motive . . . undue prejudice . . . futility of amendment, etc.--the leave sought should . . . be 'freely given.' " *Foman v. Davis*, 371 U.S. 178, 182 (1962). The Sixth Circuit applies a balancing test of these factors, which turns on *substantial prejudice* to the opposing party. *See, e.g., Lawson v. Truck Drivers, Chauffeurs & Helpers, Local Union 100*, 698 F.2d 250, 256 (6th Cir. 1983); *Hageman v. Signal L.P. Gas, Inc.*, 486 F.2d 479, 484 (6th Cir. 1973). As an Amended Complaint would merely add damages and address the concerns raised by TNDP's Motion to Dismiss, Plaintiff is unable to discern any possible prejudice to TNDP or the other defendants to this action if leave to Amend is allowed.

For the above-mentioned reasons, Plaintiff respectfully requests that his Motion for leave to Amend his Complaint be allowed.

### **CONCLUSION**

Plaintiff has sufficiently pled involvement by TNDP with the decision to exclude Plaintiff from the Tennessee Presidential primary ballot. Further, Plaintiff seeks leave to amend the Complaint to cure any such deficiencies raised by TNDP's Motion to Dismiss.

Therefore, Plaintiff respectfully requests that Defendant TNDP's Motion to Dismiss be denied and that Plaintiff's request to amend be allowed.

**I declare under penalty of perjury that to my knowledge the foregoing is true and correct.**

Signed this 22 day of MARCH, 2016.

By: 

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CERTIFICATE OF SERVICE

I, Roque "Rocky" De La Fuente, hereby certify that a true copy of the foregoing ***Plaintiff's Response In Opposition To Defendant Tennessee Democratic Party's Motion To Dismiss*** was served on J. Gerard Stranch, IV and Benjamin A. Gastel, attorneys for Defendant Iowa Democratic Party, by causing a copy of same to be deposited in the United States Mail, postage prepaid, this 22nd day of March, 2016, addressed as follows:

J. Gerard Stranch, IV  
Branstetter, Stranch & Jennings, PLLC  
223 Rosa L. Parks Ave., Suite 200  
Nashville, TN 37203

By: 

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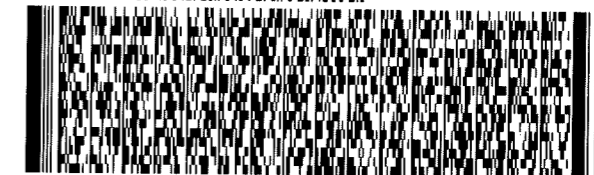
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