

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

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U.S. DISTRICT COURT
MIDDLE DISTRICT OF TN

ROQUE "ROCKY" DE LA FUENTE,

CASE NO.: 3:16-cv-00189

PLAINTIFF,

v.

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

DEFENDANT(S).

**PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANT SECRETARY OF
STATE HARGETT'S RENEWED MOTION TO DISMISS**

INTRODUCTION

On April 15, 2016, Defendant Tre Hargett, Secretary of State for the State of Tennessee ("Hargett") filed a renewed motion to dismiss seeking dismissal of all claims against Hargett pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure. Hargett 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;
2. Plaintiff's Amended Complaint fails to state a claim that Tenn. Code Ann. §2-5-205 is unconstitutionally vague and should be dismissed pursuant to Fed. R. Civ. P. 12(b)(6); and
3. Plaintiff's Amended Complaint fails to state a claim for de facto discrimination under the Civil Rights Act of 1964 and should be dismissed pursuant to Fed. R. Civ. P. 12(b)(6).

In response, Plaintiff asserts that Defendant Secretary of State Hargett

ARGUMENT

A. This Case is Not Moot Because There is a Possibility of Repetition and the Declaratory Relief Sought Affects the Legal Interests of the Plaintiff.

The declaratory relief sought, that Tenn. Code Ann §2-5-205 is vague and therefore unconstitutional, would affect the legal interests of Plaintiff. Plaintiff does not know if he would mount another presidential campaign in four years' time, but his current presidential campaign continues and the effect of failure to place on the ballot in one state affects the entirety of his campaign.

B. Plaintiff's Amended Complaint successfully states a claim that Tenn. Code Ann. §2-5-205 and §2-13-304 are unconstitutionally vague.

Defendant's motion mistakenly states that Plaintiff's Amended Complaint should be dismissed pursuant to Fed. R. Civ. P 12(b)(6) because this court can grant relief for the claims brought before it: (1) determining the constitutionality of the Tenn. Code Ann. §2-5-205 and §2-13-304 and (2) determining if the Plaintiff is entitled to nominal and compensatory damages for Defendant's actions.

Plaintiff has reiterated that the Tennessee Democratic Party's Delegate Selection Plan and the Tennessee Code both fail to explain or define "nationally recognized candidates" or even specific by whom the candidate must be "generally recognized." (Plaintiff's Amended Complaint, Parr. 17).

Accordingly, this court can determine that because there is no ascertainable and quantifiable standard by which these determinations, which have already excluded the Plaintiff from participating in the Democratic Primary Election, the Tennessee Code and the Tennessee

Secretary of State's actions are unconstitutional. In that same light, this court can order the responsible parties to adjust the standard so as not to render them arbitrary.

It follows that, the lack of standards of the aforementioned documents renders Tenn. Code Ann. §2-5-205 and §2-13-304 vague and permits Defendant Hargett to discriminate against any qualified candidate on any ground, while acting under the guise of statutory mandate.

In fact, all of the Defendant's jurisprudence is from the 1970's and the 1980's and is no longer applicable to the modern election and campaigning era.

Defendant's motion makes reference to a Michigan election code which the 6th Circuit upheld as not being unconstitutionally vague. It is to be noted that this case is from 1980, whereby the structure and processes to determine whether a person is a valid and viable candidate could have been determined by "a list of the individuals generally advocated by the national news media to be potential presidential candidates." Although it is true that traditional standards such as this, have been upheld in other courts, the Plaintiff requests that which the new technology and means for campaigning and advertising, the governmental bodies who have the power to determine who is placed on these ballots have some sort of restrictions which are limited and precise.

Also, Defendant's motion mistakenly makes reference to *LaRouche v. Crowell*, 709 S.W.2d 585, 587 (Tenn. Ct. App. 1985) without acknowledging that matter of damages. In the present case, and as the Defendants have asserted in their motions, the Plaintiff amended his complaint to include a provision for damages. There are two issues before this court: (1) the determination of the vagueness of the law which allowed for the arbitrary decision to exclude the Plaintiff from the Democratic Primary Election ballot to take place and (2) compensatory damages to the Plaintiff for the costs incurred, and associated with, the campaign efforts in an amount to be proved at trial. In the aforementioned case the court found the case to be moot because the

determination as to that Plaintiff's inclusion in the ballot was moot. In the present case I ask this court to make a determination as to the two issues before it and find in favor of the Plaintiff.

Further, the Defendant makes reference to a case which the Plaintiff has brought before the South Carolina Democratic Party, insinuating that this precedence should be utilized by this court. To that end, it is to be noted that the Plaintiff was placed on the Democratic Primary Ballot in over 40 states of the United States of America- in fact in the state of California the Plaintiff was recognized as having national media recognition and was placed on the ballot without needing to submit any signatures. In that sense, the decision of the few states who decided to exclude the Plaintiff from the Democratic Primary Ballot, including South Carolina and Tennessee, demonstrate that there is a deep flaw in the way that these government officials make their determination. The vast discrepancies and differences between the states demonstrates the lack of objectivity and arbitrariness in their decision. If a person has obtained "national media recognition" by California then that should demonstrate the varying, lacking and erroneous standards that have been utilized in Plaintiff's prejudice.

CONCLUSION

Plaintiff maintains the existence of a current case or controversy that may be resolved by this court.

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

Signed this 29 day of APRIL, 2016.

By: 

Roque "Rocky" De La Fuente
5440 Morehouse Drive Suite 45
San Diego, CA 92121
Telephone: (858) 353-5252
Facsimile: (858) 623-9009