

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

MAY 03 2016

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 TENNESSEE DEMOCRATIC PARTY'S RENEWED MOTION TO
DISMISS**

INTRODUCTION

On March 8, 2016, Defendant Tennessee Democratic Party (the "TNDP") filed a renewed 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 reasserts that TNDP aided Defendant Secretary of State Hargett in his ballot access decision.

ARGUMENT

A. This Case Did Not Become Moot After the March 16th Democratic Presidential Preference Primary Election Because the Plaintiff's Inability to Participate in That Election in South Carolina Affected the Remainder of His Presidential Campaign.

By being arbitrarily excluded from Tennessee's Presidential Primary Election process, Plaintiff's entire campaign has suffered because the momentum and success of a national campaign is cumulative, and excluding the people of one state from being able to vote for a candidate affects a candidate's ability to succeed nationally. When the Plaintiff was denied placement on the Democratic Presidential Preference Primary Election ballot, he was deprived access to the General Presidential election process because forty-seven out of fifty states have enacted what are known as "Sore Loser Laws."

These laws prevent a losing candidate in the general election from subsequently filing to run as a listed candidate in the general election as the nominee of another party or an independent candidate. As the Plaintiff has already been accepted on the ballot in over forty other states and territories, he could no longer run an effective Independent presidential campaign. Therefore, the TNDP's actions in influencing Secretary Hargett to not include Plaintiff on the Democratic presidential primary had effects lasting beyond March 16, 2016 and resulted in a case or controversy that can be resolved by this court through the award of damages to Plaintiff.

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.

B. 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.

CONCLUSION

Plaintiff has sufficiently pled involvement by TNDP with the decision to exclude Plaintiff from the Tennessee Presidential primary ballot and 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

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 RENEWED MOTION TO DISMISS* was served on J. Gerard Stranch, IV, attorney for Defendant Tennessee Democratic Party, by causing a copy of same to be deposited in the United States Mail, postage prepaid, this 30 day of APRIL, 2016, addressed as follows:

J. Gerard Stranch, IV
BRANSTETTER, STRANCH & JENNINGS, PLLC
223 Rosa L. Parks Ave., Suite 200
Nashville, TN 37203

By: 

Roque "Rocky" De La Fuente
5440 Morehouse Drive
Suite 45
San Diego, CA 92121
Telephone: (858) 353-5252
Facsimile: (858) 623-9009
roque@rocky2016.com

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 SECRETARY OF STATE HARGETT'S RENEWED MOTION TO DISMISS* was served on Janet M. Kleinfelter, attorney for Defendant Tre Hargett, Secretary of State of Tennessee, by causing a copy of same to be deposited in the United States Mail, postage prepaid, this 30 day of APRIL, 2016, addressed as follows:

Janet M. Kleinfelter
Office of Attorney General
P.O. Box 20207
Nashville, TN 37202

By: 

Roque "Rocky" De La Fuente
5440 Morehouse Drive
Suite 45
San Diego, CA 92121
Telephone: (858) 353-5252
Facsimile: (858) 623-9009
roque@rocky2016.com

Extremely Urgent

This envelope is for use with the following services:

UPS Next Day Air®
UPS Worldwide Express™
UPS 2nd Day Air®

Visit ups.com® or call 1-800-PICK-UPS® (1-800-742-5877) to schedule a pickup or find a drop off location near you.

Domestic Shipments

- To qualify for the Letter rate, UPS Express Envelopes may only contain correspondence, urgent documents, and/or electronic media, and must weigh 8 oz. or less. UPS Express Envelopes containing items other than those listed or weighing more than 8 oz. will be billed by weight.

International Shipments

- The UPS Express Envelope may be used only for documents of no commercial value. Certain countries consider electronic media as documents. Visit ups.com/importexport to verify if necessary.

- To qualify for the Letter rate, the UPS Express Envelope weight

Note: Express Envelopes are not containing sensitive personal information or cash equivalent.

Apply shipping documents on this side.

Do not use this envelope for:

UPS Ground
UPS Standard
UPS 3 Day Select®
UPS Worldwide Expedited®

ROQUE DE LA FUENTE
(404) 938-0522
THE UPS STORE #4189
STE 103
4409 HOFFNER AVE
ORLANDO FL 32812-2331

SHIP NASHVILLE CLERK S OFFICE
TO: STE 800
801 BROADWAY

0.2 LBS LTR 1 0
SHIP WT: LTR
DATE: 02 MAY 2016

NASHVILLE TN 37203-3869
TN 371 9-02

UPS NEXT DAY AIR
TRACKING #: 1Z 23W A47 01 9972 0515 1

NASHVILLE CLERK S OFFICE
801 BROADWAY
STE 800
NASHVILLE TN 37203-3811

P: WHITE S: BW2 I: SOU
AMIL - 8000
1723WA47019972 0515 1030
TENZJB THH1104 MAY 03 07:27:15 2016
US 3722 HIP 16.3.5 ZENRA2M400

2016
Printed and
labelation
#0216

RECEIVED
IN CLERK'S OFFICE
MAY 03 2016
U. S. DISTRICT COURT
MID. DIST. TENN.

Serving you for more than 100 years
United Parcel Service.



International Shipping Notice - Carriage hereunder may be subject to the rules relating to liability and other terms and/or conditions established by the Convention for the Unification of Certain Rules Relating to International Carriage by Air (the "Warsaw Convention") and/or the Convention on the Contract for the International Carriage of Goods by Road (the "CMR Convention"). These commodities, technology or software were exported from the U.S. in accordance with the Export Administration Regulations. Diversion contrary to U.S. law prohibited.