

THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

Roque “Rocky” De La Fuente Guerra,
Victor Di Maio, Jose Ramon Bolano Valladares,
Ada L. Hernandez, Marco A. Bolano Hernandez,
Carlos H. Aleman Gonzalez, Sobeida Aleman, and
Carlos Heriberto Aleman,

Plaintiffs,

CASE NO.: 4:16-cv-00026-RH-CAS

vs.

Democratic Party of Florida and
Ken Detzner, Secretary of State of Florida,

Defendants.

MOTION FOR REHEARING

On January 23, 2016, this Court entered an order denying without prejudice the plaintiffs motion for preliminary injunction.

The key and pivotal reason the court gave for denying the Motion for Preliminary Injunction was because the Plaintiffs failed to show that Mr. De La Fuente was a substantial candidate for the Democratic nomination for president.

Neither the Florida Statutes nor the Democratic Delegation Plan requires a candidate to have substantial support. The plan provides that the Florida Democratic Party will prepare and approve a list of recognized Democratic Presidential candidates.

Attached hereto is a copy of Section II of the Florida 2016 Democratic Delegate Selection Plan, and a copy of Section 103.101 of the Florida Statutes.

The Statutes provide that each political party shall submit to the Secretary of State, by November 30 of the year preceding the presidential preference primary, a list of its presidential candidates to be placed on the presidential preference primary ballot or candidates entitled to have delegates appear on the presidential preference primary ballot.

The order states that the Plaintiffs concede a state may limit ballot access to avoid voter confusion. However, this pertains to a situation where a state has a statute or the party has a rule which requires potential candidates to prove substantial support in order to obtain ballot access.

Some states and parties use the terms "nationally recognized" or "recognized in the national media", etc. Where the statute is silent and relegates the authority to the parties to determine the candidates to appear on the ballot and the rules of the party do not require a candidate to prove substantial support, the parties and the state may not arbitrarily deny ballot access.

If the court has interpreted the word "recognized" as synonymous with "substantial support", the two terms are clearly not synonymous.

The language used in the Florida Democratic Delegation Plan is at least as vague as the language used in the Rhode Island Statute cited in the case of *Duke v. Connell*, 790 F. Supp. 50 (D. Rhode Island 1992) In that case, the statute directed the Secretary of State to announce the names of those bona fide national candidates for presidential nominee known to the secretary. The court found that this language was unconstitutionally vague.

"Section 17–12 .1–12 (C) defines a "bona fide national candidate" as a person "generally recognized nationally as a presidential contender within his or her respective party," but this definition fails to specify by whom the candidate must be "generally recognized nationally". Therefore, a candidate cannot discern whether he or she will be among the chosen few.

The court recognized that some courts have upheld statutes saying that reference to the media as a source of candidate recognition permits the statutes to be reasonably applied. The court further stated that "in any event the media – recognition state provides more objective criteria than the Rhode Island statute, which is devoid of any standard.

In the case of *Kay v. Mills*, 490 F. Supp. 844 (E. D. Kentucky 1980) The court addressed a statute which provided that the state board of elections would nominate as presidential preference primary candidates all those generally advocated and nationally recognized as candidates of the political parties for the office of president of the United States. The court entered a preliminary injunction prohibiting the printing or distribution of the ballots unless Plaintiff's name appeared thereon.

The court found that the statute was void for vagueness. The court recognized that in the case of *Kay v. Austin*, 621 F. 2d 809 (6th Cir. 1980), the Sixth Circuit Court of Appeals held that a statute which provided that" the Secretary of State shall issue a list of the individuals generally advocated by the national news media to be potential presidential candidates for each parties' nomination by the political parties for which a presidential primary election will be held pursuant to section 613", was not

unconstitutionally vague, because all of the contested phrases were capable of narrow and reasonable applications.

The case herein is distinguishable, because the rules of the Florida Democratic Party were not narrowly drawn.

The Plaintiffs posit if the rules of the Florida Democratic Party regarding ballot access of presidential candidates is unconstitutionally vague on its face, the Plaintiffs do not have to present any evidence that the Plaintiff, De La Fuente is a "Substantial" candidate. It only has to be shown that he is recognized as a candidate, which can be established by public record and certainly will be conceded by the Defendants.

The Plaintiffs request that this court reconsider its order denying without prejudice the motion for preliminary injunction.

Respectfully Submitted,

s/ Michael A. Steinberg

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY I hereby certify that I have sent a copy of the foregoing to
the following:

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Florida 2016 Delegate Selection Plan

- a. Promote the acquisition, maintenance and regular replacement of accessible precinct based optical scan systems, wherever possible. *(Rule 2.H.1)*
 - b. Seek enactment of legislation, rules, and policies at the state and local level to ensure that direct recording electronic systems include a voter verified paper trail. *(Rule 2.H.2)*
 - c. Seek enactment of legislation, rules and policies at the state and local level to ensure that both optical scan and direct recording electronic systems include recognized security measures. These measures include automatic routine manual audits comparing paper records to electronic records following every election and prior to certification or results where possible; parallel testing on election day; physical and electronic security for equipment; banning use of wireless components and connections except where required to provide a voter with a disability a secure and approved means to access voting materials and exercise the right to vote; public disclosure of software design; use of transparent and random selection for all auditing procedures; and effective procedures for addressing evidence of fraud or error. *(Rule 2.H.3)*
6. Scheduling of Delegate Selection Meetings
- The dates, times and places for all official Party meetings and events related to the state's delegate selection process have been scheduled to encourage the participation of all Democrats. Such meetings will begin and end at reasonable hours. It shall be the responsibility of the Florida Democratic Party to select the dates, times and to provide facilities for all official party meetings and events related to the national convention delegate selection process. The Florida Democratic Party shall take into consideration any religious observations that could significantly affect the participation of any Democrat. *(Rule 3.A & Reg. 4.5)*

Section II Presidential Candidates

A. Ballot Access

A presidential candidate gains access to the Florida presidential preference primary ballot by the following procedure†:

† Florida Statute 103.101, paragraph 2, provides "By November 30 of the year preceding the presidential preference primary, each political party shall submit to the Secretary of State a list of its presidential candidates to be placed on the presidential preference primary ballot or candidates entitled to have delegates appear on the presidential preference primary ballot."

Florida 2016 Delegate Selection Plan

- (1) The Florida Democratic Party will prepare and approve a list of recognized Democratic presidential candidates. By Monday, November 30, 2015, the Florida Democratic Party will submit a list of its presidential candidates to the Secretary of State to be placed on the Presidential Preference Primary ballot.
- (2) The Secretary of State shall prepare and publish a list of names of the presidential candidates submitted no later than December 15, 2015[‡].
- (3) The Department of State shall immediately notify each presidential candidate listed by the Secretary of State. Such notification shall be in writing, by registered mail, with return receipt requested.
- (4) There is no other procedure (i.e., filing process) by which presidential candidates gain access to the Florida Presidential Preference Primary ballot.

B. Other Requirements

1. Each presidential candidate shall certify in writing to the State Democratic Chair, the name(s) of his or her authorized representative(s) by December 1, 2015. Individuals who announce their candidacy after this date must provide this information to the Chair of the Florida Democratic Party not later than ten (10) days after their announcement. (*Rule 12.D.1*)
2. Each presidential candidate shall use his or her best efforts to ensure that his or her respective delegation within the state delegation achieves the affirmative action goals established by this Plan and is equally divided between men and women. (*Rule 6.I*)

Section III Selection of Delegates and Alternates

A. District-Level Delegates

1. Florida is allocated 140 district-level delegates. (*Rule 8.C, Call I.B, I.I, Appendix B & Reg. 4.31*)
2. District-level delegates shall be allocated to presidential preferences through a proportional representation system based on a Presidential Preference Primary held on Tuesday, March 15, 2016, followed by a post-primary caucus held within each Congressional District on May 7, 2016.

[‡] Florida Statute 103.101, paragraph 4, provides, "If, however, a political party has only one presidential candidate, neither the name of the candidate nor the names of the candidate's delegates shall be printed on the ballot."

(1) Each political party other than a minor political party shall, at the presidential preference primary, elect one person to be the party's candidate for nomination for President of the United States or select delegates to the party's national nominating convention, as provided by party rule. The presidential preference primary shall be held on the third Tuesday in March of each presidential election year. Any party rule directing the vote of delegates at a national nominating convention shall reasonably reflect the results of the presidential preference primary, if one is held.

(2) By November 30 of the year preceding the presidential preference primary, each political party shall submit to the Secretary of State a list of its presidential candidates to be placed on the presidential preference primary ballot or candidates entitled to have delegates appear on the presidential preference primary ballot. The Secretary of State shall prepare and publish a list of the names of the presidential candidates submitted not later than on the first Tuesday after the first Monday in December of the year preceding the presidential preference primary. The Department of State shall immediately notify each presidential candidate listed by the Secretary of State. Such notification shall be in writing, by registered mail, with return receipt requested.

(3) A candidate's name shall be printed on the presidential preference primary ballot unless the candidate submits to the Department of State, prior to the second Tuesday after the first Monday in December of the year preceding the presidential preference primary, an affidavit stating that he or she is not now, and does not presently intend to become, a candidate for President at the upcoming nominating convention. If a candidate withdraws pursuant to this subsection, the Department of State shall notify the state executive committee that the candidate's name will not be placed on the ballot. The Department of State shall, no later than the third Tuesday after the first Monday in December of the year preceding the presidential preference primary, certify to each supervisor of elections the name of each candidate for political party nomination to be printed on the ballot.

(4) The names of candidates for political party nominations for President of the United States shall be printed on official ballots for the presidential preference primary election and shall be marked, counted, canvassed, returned, and proclaimed in the same manner and under the same conditions, so far as they are applicable, as in other state elections. If party rule requires the delegates' names to be printed on the official presidential preference primary ballot, the name of the presidential candidates for that political party may not be printed separately, but the ballot may reflect the presidential candidate to whom the delegate is pledged. If, however, a political party has only one presidential candidate, neither the name of the candidate nor the names of the candidate's delegates shall be printed on the ballot.

(5) The state executive committee of each party, by rule adopted at least 60 days prior to the presidential preference primary election, shall determine the number, and establish procedures to be followed in the selection, of delegates and delegate alternates from among each candidate's supporters. A copy of any rule adopted by the executive committee shall be filed with the Department of State within 7 days after its adoption and shall become a public record. The Department of State shall review the procedures and shall notify the state executive committee of each political party of any ballot limitations.

(6) All names of candidates or delegates shall be listed as directed by the Department of State.